

I-11-6

THE
COMMON LAW
EPITOMIZ'D:

WITH
Directions how to Prosecute
and Defend Personal Actions.

Very useful for all Lawyers, Justices of
Peace, and Gentlemen.

To which is annexed
The nature of a Writ of ERROR, and the
general proceedings thereupon.

WITH
A plain TABLE for the easie finding out of
every particular.

By *William Glisson* and *Anthony Gulston*,
Esquires, Baristers at Law.

*The Second Edition; revised, explained, and much
largely by W. S. of the Inner-Temple, Esquire.*

Good communicated doubles it self.

— *Vivere nemo*

Nunc sine Lite solet, nec sine Lege potest.

L O N D O N,

Printed by the Assigns of *Rich. and Edw. Askins*, Esq;
and are to be sold by *Tho. Burrel* at the Golden-Ball under
St. Dunstons Church, and *Geo. Downes* at the three Flower
de lucets over against *St. Dunstons Church* in Fleetstreet,
M DC LXXIX.



29. Nov. 1677.

I do allow the Reprinting the
COMMON LAW EPITOMIZED,
as it is now Corrected and Inlarged.

Fra: North.

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1695: 10

The Epistle Dedicatory.
TO THE
Professors & Practisers
OF THE
COMMON LAW
OF
ENGLAND.

Candid Reader.

THis Tract in French was be-
queathed to me by an alliance, Wil-
liam Glisson Esquire deceased, which I
have translated into our own Language
for the Common benefit of all. I am
not singular in it, for daily experience
manifests the contrary: neither is it a
Novelty for Law-books to appear in this
dress. Antiquity may be pleaded, Sr.

The Epistle Dedicatory.

Germin Perkins, Stanford, Crompton, Lambert, Sir Henry Finch, Dalton, and divers others have in former days troden this path. My desires are that it may not be perused by those who read only to fault, what they cannot mend, but by those whose judicious Pen will correct the errors as Cognizances of humane frailty. I wish it successful to all, be he Pleader or Practiser; and that the Common Law of England may shine forth in these Cloudy, and Eclipsed days, is the Prayer of him who is

Staple Lane,
January 20th.
1658.

A Well-wisher

to the Laws

HEN. APPLGARTH.

To

To the READER.

Ingenuous Reader,

THese ensuing Lines were not fixed to this Treatise to commend its worth unto thee; for, if I can judge rightly, it needs them not, as I doubt not but thou wilt confess upon the perusal of it. And this made me some years past take some pains in correcting many Errataes of the Press, and explaining many obscurities I met with; and in shewing the reason of the Law in many places, without any other aim than my own private satisfaction. But since that understanding an intent of Re-printing of the Copy, I thought it not amiss to impart what I had done to the Undertakers thereof; not only for their benefit, but for the Readers clearer information, and easier understanding of the greater variety of the matters therein contained, and in the former Edition very briefly, and in many places obscurely set forth. If my pains herein may prove profitable to any, I shall think it well bestowed; however I shall rest satisfied with this perswasion, That neither the Printers nor Readers can be prejudiced by these my well intended endeavours.

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admisit, quare in-
cumbravit. 9. Replevin. 10. Trespafs. 11. Error. |
|--|---|---|

Wherein is plainly set down and demonstrated

1. What their severall natures are.
2. How many fold they are.
3. In what Court they most properly lye.
4. Who may best bring them.
5. Against whom they lye.
6. For what causes they lye.
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ACCOUNT.

Account is by	Common Law	By Act of Law Guardian in Soccage	Next of Kin.		
		Bailly	of a Court or Hundred in Law.	A Stranger.	
			of a Mannor-houſe, &c. in deed.	in caſe of a Subject.	
			By his own act.	in caſe of the King.	
		Receiver	By other hands	in law	in caſe of a Subject.
	By his own hands		in deed	in caſe of the King.	
	Statute Law	Marlebridge cap. 17. Againſt a Guardian in Soccage.			
		Marlebridge cap. 23. Againſt a Bailly vagarant.			
		Weſtm. 2. cap. 23. For Executors.			
		25 Edw. 3. cap. 5. For Executors of Executors.			
3 Edw. 3. cap. 11. For Adminiſtrators.					
23 Hen. 8. cap. 8. Collectors for repairing of Goals ſhall account to Juſtices of Peace.					
2, & 3 Maria cap. 8. Againſt Head-Conſtables or Churchwardens.					
43 Eliz. cap. 2. Overſeers of the Poor ſhall Account to Juſtices of Peace.					
	1 Jacobi cap. 9. Againſt Churchwardens and Conſtables for Forfeitures of Alehouſe-keepers by them received.				

Account against a Guardian in Soccage.

In what Court Account lieth against a Guardian in Soccage.

IT lies in the County Court or Common Bank. *Nat.br. 117.b.*

It lies not before the Sheriff, 43 *Edm. 3.* fol. 21. pl. 11. *Thorpe* : For *Brook*, Account 14. saith, the Sheriff cannot assign Auditors, and therefore it is in vain to bring the Action before him.

A

A

Account.

A good plea to say the Land is ancient demesne, because the reality may come in question, *Coke* 5. part, fol. 105. A. *Aldens* case.

It lies not in the Marshallsey: *Coke* 10. part, 74. b. Marshallsey.

Who shall have a Writ against Guardian in Socage.

The Heir in ward shall maintain an Action against him after the age of 14 years, or at his full age at his election. *Littleton* S. 123.

But *Nat. br.* 118. b. he shall not have it till the age of 21 years. *Crook* fol. 131. pl. 106. by reason of the words of the Statute of *Marlebridge*, cap. 17. *scil.* (*cum ad etatem pervenerit*) 3 & 4 *Maria*, *Dyer* 137. pl. 25. *New tenures* 3. b. 18 *Edw.* 3. 55. pl. 76. 29 *Edw.* 3. fol. 5. pl. 13. *Vide Regist. origin.* 136. *Lib. Intra.* 21. D. 8 R. 2. *Gard.* 166. 10 *Rich.* 2. *Account* 132. *Doct. Stud.* fol. 14. b. *Old Nat. br.* 91. A.

If the Heir in such case die before his full age, his Executor shall maintain an Action of Account, *Crook* 131. pl. 106. because it concerns a Chattel.

Yet note, the Heir in Gavel-kind at 15 years brought an Account against a Guardian in Socage, and shews, by the Custome he may alien at such age; and for this cause he was awarded to Account, *per Welby.* 29 *Edw.* 3. fol. 5. pl. 13. For if he may do the greater, he may do the less; to sell is more than to take an Account.

The Executor of an Heir shall have an Account,

count, per West.2.cap.23. Littleton 27. A. Crook 131. pl.106.

Executor of an Executor shall have an Account by 25 Edw.3.cap.23.Com.290.

Filius & Heres Domini defuncti non habebit breve de computo, quia pertinet ad executionem administrationis bonorum defuncti. Regist. Orig.135.b

A Recusant shall not have an action for any thing that is seized into the hands of the King, 3 Jac.cap. 5. for the King is accountable to no body.

Against what person an Account lieth as Guardian in Socage.

Account lieth against any that taketh the profits before the Ward be of the age of 14 years, Littleton Nat.br.118.D. 4 Hen.7.6. 10 Hen.6. 7. 13 Edw.3.Account 77. 29 Ed.3.5.pl.13.

But if one occupy, and after Guardian in Socage recover in right of the Ward, the party shall not render an Account to the Heir, for the Guardian ought to account for this, 27 Edw.3.79. Gard. 22. and therefore the Account shall be made to the Guardian.

The reason is (as it seems) that the Writ doth not make mention of the blood. Regist.orig.136.b. neither the Count, Lib. Intra.

Account lieth not against an Executor of a Guardian, Littleton. Nam non jacet versus Executores, quia merè pertinet ad Curiam Christianam, cognoscere de computo reddendo versus Executores. Regist.orig.135.b.28 Hen.8. Dyer 23.pl.145.

Account.

But if Executors account, an Action of Debt lieth for the Arrearages, 2 Hen. 4. 13. pl. 2.

And if the Testator covenants to account to the Heir and doth not, Covenant lieth against his Executor, *Regist. origin.* 165. b. *Nat. br.* 145. H.

It lies against a Woman, 19 H. 6. b. *Newton.*

It lies against the Husband and Wife, 18 Ed. 3. 55. pl. 76.

For what things Account lieth.

It lies for Woods and Under-woods sold, for Lands, Tenements, Meadow, Pasture; also for Rents and Services, perquisites of a Court *ad valentiam.* *Lib. Intra.* 21. B. & C.

Marlebridge cap. 17. Respondeant de exitibus per equalem computationem, salvis ipsius custodibus rationabilibus misis suis.

For Fines of Copyhold Land granted by one. *Trin.* 1 *Jac. Com. Banc.* Shopland *versus* Rider, *Rot.* 853.

For the issues and profits of the Lands: *Littleton.*

For the Marriage of the Heir, if he marry before the Age of fourteen years: *Littleton* 27. a.

If the Marriage be not as great in value as the marriage of the Heir: *Littleton* 27. A.

No Account for the presentation of a Church; therefore the Guardian cannot present thereunto, *Nat. br.* 33. T. 28 *Edw.* 3. 89. 29 *Edw.* 3. 5. 8 *Ed.* 2. Presentment 10.

But by *Daniel Justice*, *Trin.* 1 *Jac. Com. Ban. Rot.*

Account.

5

Rot.853. *Shopland* against *Rider*: the Guardian shall present, if the Heir be not of the age of discretion.

It lies for Writings, 32 *Edm.* 3. Account 60.

The Account against a Guardian in Socage.

The Heir counts, that it was ordained by the Common Council of the Land, that the Guardian in Socage should Account, &c. and shews the tenure specially, and that the Defendant had the custody of the Lands, &c. from such a day for 12 years ensuing, and hath not accounted for the issues and profits, &c. and that at such a day the Heir was at full age. *Lib. Intra.* 21. b. *Sec.* 1, 2. 29 *Ed.* 3. 4. pl. 13. No. *Lib. Intra.* 47 E. *Sec.* 3.

The Writ against a Guardian in Socage.

Rex, &c. si A. fecerit, &c. tunc summon. &c. B. quod sit coram Justic. nostris, &c. ostensum quare cum de Comm. Concilio Regni nostri provisum sit, quod custodes terrarum & tenementorum que tenentur in Socagio heredibus terrarum & tenementorum. cum ad etatem pervenerint, reddant rationabilem computum suum de exitibus, terris, & tenementis illis provenientes: de tempore quo custodes illi habuerunt, ratione mineris atatis heredis predictæ, idem B. prefato A. rationabilem computum suum de exitibus provenientes. de terris & tenementis suis in N. que tenentur in Socagio, & quorum custodiam idem B. habuit, dum predictus A. infra etatem fuit, reddere contradicit, ut dicitur. Et ideo, &c. This Writ is founded per le Stat. de Marlebr. cap. 17. Nat. br. 118. A. Regist. orig. 136.

A 3

Note,

Note, this Writ lies against any one that occupies the Land during the nonage of the Ward, whether it be the parents of the Heir or not, *Regist. origin. 136. b.* for it makes no mention of the blood, but only of taking the profits.

The Writ was *Receptor denariorum*: A good plea to the Writ, because he was Guardian in Soccage; for otherwise he would be twice charged, *18 Edw. 4. 3. pl. 17. viz.* as a Receiver of his rents or profits of the Lands, and also as a Guardian in Soccage by the Statute.

The Process against a Guardian in Soccage:

1. *Before appearance.* 2. *After appearance.*

1. The Process at Common Law before appearance was but a Distress infinite, *Coke 3. part. 12. A. Herberts Case.*

But *per Marlebridge cap. 23.* a *Capias* was given against a Bailly, and *per Westm. 2. cap. 11. exigend.* given against a Servant, Bailly, Chamberlain, or any other Receiver, *Coke 3. part 12. A. Herberts Case.*

And in Account against a Guardian there shall be a *Capias*, *29 Edw. 3. 5. pl. 13.*

But no *exigend.* because this was given against a Receiver only, *17 Edw. 2. Process 203. 17 Edw. 3. 59. pl. 55. Shard.*

2. If he comes in by *Capias* or distress, he shall be committed to the Fleet, *29 Edw. 3. 35. pl. 63.*

After appearance.

If the Account be adjudged to lie, &c. and he be not present in Court, a *Capias ad computandum* shall issue forth, *1 Edw. 3. 2. pl. 10. 1 Hen. 7. 1. pl.*

pl. per Townshend. Lib. Intra. 18. c. Sect. 1, 2, 3.

In Judgment *quod computet*: the Plaintiff dies, his Executors shall have a *Scire facias* upon the Judgment, and if the Defendant come not in upon the garnishment or warning, an *exigend.* shall issue forth, 14 Hen. 4. 1.

The Barr by a Guardian in Soccage: 1. To the Action of Account. 2. Before Auditors in discharge.

That he had the Custody till such a day from such a day, and accounted till the full age of the Plaintiff without that, that he was Guardian before or after, *Lib. Intra. 21. cap. Sect. 2.*

1.

It is a good Barr in discharge of the Account, that he expended so much for necessaries for the Plaintiff, *ultraque, &c. Littleton.*

No Barr to say he was not next of Kin, for the occupation is the substance, and not the Kindred, *Littleton 29 Edw. 3. 5. pl. 13. 22 Edw. 3. 11. pl. 8. 4 Hen. 7. 6. b. 10 H. 6. 7. pl. 21. 13 Edw. 3. Account 77.*

That he was never Guardian in Soccage a good Barr, *Lib. Intra. 21. b. Sect. 1.*

The Judgment against a Guardian in Soccage,
1. Of Account. 2. To recover the thing.

The Judgment is, *quod computet, & ideo in misericordia, quia prius non computavit*, *Coke 11. par. 38. A. Metcalfs Case. Lib. Intra. 19. D. Sect. 1.*

1. To Account.

The Judgment is, *Ideo consideratum est, quod*
A 4 *prædictus*

2.

prædictus W. recuperet versus præfatum M. to recover as much as he is found in Arrearages, & dampna occasione implacitationis: Coke 11 part 40. A.

Execution against Guardian in Socage: 1. per Common Law, 2. per Statute Law.

1. By the Common Law it was but a *Levari facias* or *Fieri facias*: *Coke 3. part 12. A. Herberts Case.*

And this only within the year; for if the year passed, he was put to his Action of debt.

If the Process were not continued, 33 *Hen. 6.* 49. *pl. 33.*

2. *Per Westm. 2. cap. 45. Scire facias* is given after the year.

Per Westm. cap. 2. 18. Elegit is given, *Coke 3. part 12. a.*

Per Marlebridge cap. 23. & Westm. 2. cap. 11. Capias was given in Process and by consequence, *Capias ad satisfaciendum: Coke 3. part 12. a.*

Per Westm. 2. cap. 11. If an Accountant before Auditors be found in Arrearages, he shall be by them committed to the next Goal in execution; but then they ought to commit him forthwith, *Coke 8. part 119. b. Bonhams Case.* 27 *Hen. 6. 8. Com. 17.*

But if an Account be before the Plaintiff, he ought not to commit him to prison; because the Statute saith, before Auditors, 45 *Edw. 3. 14 pl. 13.*

Ex parte talis.

Westm. 2. cap. 11. If Auditors are assigned by the party, which will not allow to the Guardian his

Account.

9

his reasonable allowances, and they charge him with the thing he never received, and him commit to prison, he shall have an *Ex parte talis*. Nat. br. 129. F. 4 Hen. 6. 18. A. pl. 3. Regist. orig. 137. b.

The Writ is returnable before the Treasurer and Barons of the Exchequer at a certain day, and a *Scire facias* is in the Writ, to warn the Plaintiff and also the Defendant to be there, Nat. br. 129. G. H. Regist. orig. 137.

Account against a Bailly, 1. of a Court or Hundred. 2. of a Mannor-house, &c.

In what Court it lies against a Bailly.

IN the County Court: Regist. origin. 135. A. Nat. br. 117. b.

In London before the Sheriffs, Regist. orig. 135. A. & B.

In the five Ports, Regist. origin. 135. A.

In *Communi Banco*, Nat. br. 117. b. Regist. orig. 135. B.

But Ancient demesne is a good plea to the jurisdiction, Coke 5. part 105. A. *Aldens Case*; because the Account is of the issues and profits of the Mannor, 8 H. 6. 34. pl. 36. 2 Ed. 4. 3. pl. 3.

And the reality by presumption may come in debate, Hobart Chief Justice, Hill, 11 Jac. Com. Ban. Rot. 254. Cox & Barnesley.

Who shall have an Account against a Bailly, 1. of a Court, 2. of a Mannor.

If A. make B. his Bailly of his Court or of a Hundred 17

Hundred, he shall have an Account against him.
Nat.br. 118.E.

*Under-
Baily.*

A. having a Bailywick makes B. his Under-Baily, he shall have Account against B. 3 *Edw.* 3.54. *pl.* 4.

Deputy.

A. makes B. his Baily, which makes C. his Deputy, A. shall have Account against B. but not against C. because C. receives this to the use of B. *Nat.br.* 119.B. 14 *Edw.* 3.100. *pl.* 8.

2.

An Infant purchases Lands, he shall have an Account, if any take the profits. *Nat.br.* 117.B.

For the profits that the Guardian in Soccage takes after the Heirs age of 14 years, the Heir shall have an Account during his nonage against him as his Baily: but for the profits taken before such age, he shall have Account as Guardian in Soccage; but not before his full age. *Nat.br.* 118.B. because he cannot be Guardian after the age of 14 years.

*Account
for the
Major and
Aldermen
of Lon-
don.*

Major and Aldermen of London grant the Wardship of an Orphan to A. they shall have an Account against A. at the full age of the Orphan. 8 *Rich.* 2. *guard.* 166.

A. devises to his Executors that they shall sell his Land, and that his daughter shall have part of the money, she shall have an Account at the Common Law. 4 & 5 *Maria Dyer* 151. *pl.* 5.

Lunatick.

A Lunatick shall have an Account against the Committee, when he comes to his sound memory; for the Committee is but in the nature of a Baily. 28 *Hen.* 8. *Dyer* 26. *pl.* 164. *Coke* 4. *part* 127.b. *Beverley's Case.*

Executor.

An Executor shall have an Account. *Nat. br.*

Account.

11

117.C. 3 Edw. 3. 66. 7 Edw. 3. 269. 5 Edw. 3. 141.
pl. 7.

But this was by *Westm. 2. cap. 23.*

And if one hath Judgment against a Bailly upon an Account, and dieth, his Executors shall have a *Scire facias*, 14 Hen. 4. 1. upon the Judgment.

Executor of an Executor shall not have an Account, per *Westm. 2. cap. 23. 7 Edw. 3. 270. pl. 54.*

But this was given per 25 Edw. 3. cap. 5. pl. Com. 290.

Filius & heres domini defuncti non habebit Breve de Computo super Ballivum, quia pertinet ad executionem administrationis bonorum defuncti. Regist. Orig. 135.b.

Husband receives the profits of the Lands of his wife and dies, the wife shall not have an Account for the profits during the Coverture against the Executors of the husband. *Nat. br. 119. A.*

Joynt-tenant makes his Companion his Bailly, he shall have Account against him, 21 E. 3. 60. pl. 5. 2.

Two Joynt-tenants of a ward; one takes all the profits, the other shall have an Account. *Nat. br. 118. f. 39 Edw. 3. 28. pl. 25. 45 Edw. 3. 1. 2.*

Two Joynt-occupiers of a house and Merchandise, one shall have Account against the other as Bailly of the house and Merchandise. *Lib. Intra. 18. Sect. 6.*

Terre-tenant shall have an account against Tenant by *Eligit*, but this is only by *Scire facias*,
Old

Old Nat.br.24. 21 Edw. 3. 26. pl.21. & fol.10. pl.13. 21 Edw.3.2. pl.60. 5 Edw. 3. 159. pl.20. Conusor shall have it in the same manner against the Conusee, Coke 4. part 67. b. 47 Edw. 3. 11. pl 9. & 25. pl.63.

Prior, Abbot, or Master of an Hospital shall have an Account for the time of their Predecessor *Nat.br.117.F. Regist.orig.135. b. 4 Edw.3. 100. pl.8. 25 Edw.3.545. pl.19. 28 Edw.3.90. 30 Edw.3.1.*

If one make another Bailly of his Mannor, &c. he shall have an Account against him as Bailly, *Nat.br.116.D.*

Breve fuit quod reddat, &c. M. & sociis suis mercatoribus de societate de D. in Flandria rationabilem computum; this is naught, *5 Edw.3.138. pl.39.* for the generality of it.

The King may make a Bayliff of a Mannor, and shall have an Account against him, *33 Hen. 6.2. pl.10. and fol.29.b. pl.2.*

Against whom an Account lieth as Bailly, 1. of a Count or Hundred. 2. of a Mannor, &c.

1. A. having a Baillywick makes B. his Under-Bailly to gather the Amercements, he shall have an Account against him, *3 Edw.3.54. pl.24.*

2. If one enter into my land to my use, and take the profits, I shall have an Account against him as Bailly in Law, *Nat.br.117.A.*

An Infant purchases Lands, his parents occupy this, he shall have Account against them as Bailies in Law, *Nat.br.117.b.*

Non

Account.

13

Non jacet versus Executores, quia mere pertinet ad curam Christianam cognoscere de Computo reddendo, versus Executores, Regist. origin. 135. b. Nat. br. 117. C. Littleton, 48 Edw. 3. 2. 4 Edw. 4. 25.

But if an Executor will account, though not compellable, debt lieth for the Arrearages due upon the Account, 2 Hen. 4. 13. P. 2.

And if a Bailly be found in Arrearages before Auditors, his Executors shall be charged, if they have Assets, 11 Hen. 4. 84. & fol. 19. pl. 48.

It lieth not against a Deputy-Bailly, Nat. br. 119. B. 4 Edw. 3. 100. pl. 8. because the Head-Bailly is chargeable.

It lieth not against an Infant, 118. D. Nat. br. because he hath not discretion to Account, 21 Edw. 3. 8. pl. 21. Regist. origin. 135. A. Also he cannot wage his Law, 26 Edw. 3. 63. b. for he cannot take an Oath.

It lies against a Woman, Nat. br. 118. D. 19 Hen. 6. 4 pl. 10.

Two Joynt-tenants of wood, one sells all and takes the money, the other shall not have an Account against him, Doct. & Stud. 32. b.

It lies not against a Surveyor or Controller, Nat. br. 119. C.

The King shall have an Account against any person that takes the profits, though he claim them to his own use per Prerogativam, Coke part 11. 90. Devoushers Case. 35 Hen. 6. 27. b. Nottingham. 8 Eliz. Dyer 249. pl. 83.

The King shall have an Account against an Executor, Littleton, Coke 11. part 89. B. Devoushers Case, per Prerogativum.

For

*For what things Account lieth against a Bailly,
1. of a Court, &c. 2. of a Mannor, &c.*

Crook 21 Hen. 7. 75. pl. 23. Account against one as Bailly *Burgi sui de B.* and good.

Account against one as Bailly of a Mannor, *Nat. br.* 116. P.

Account against a Steward of an House, and of Goods in it, 14 Hen. 4. 20. 9 *Edm.* 3. 356. pl. 40.

Account for the delivery of three Tuns of Wine sold, 43 *Edm.* 3. 2. pl. 11. 46 *Edm.* 3. 3. 3. pl. 6. 13 *Rich.* 2. Account 50.

For Herrings delivered and sold, 46 *Edm.* 3. 9. pl. 4.

For four sacks of Wool delivered and sold, 9 *Edm.* 3. 359. pl. 38.

Tenant *per Elegit* accounts for the overplus, *Old Nat. br.* 34. 21 *Edm.* 3. 26. pl. 21.

A man accounts for the profits *de, &c.* *Nat. br.* 118. B.

+ A Bailly of Woods accounts for Herons and Hawks, 14 *Edm.* 3. Account 131. *Moubrey.*

Arrearages of Rent upon a Lease for years or at will lies not in Account, for nothing certain lies in an Account, 19 H. 6. 20. pl. 67. 20 H. 6. 16. pl. 2. as the Rent is; but an Action of Debt.

So of Goods leased with a House, although they are wasted, 20 H. 6. 16. pl. 2.

So for a Custome, that one shall gather Rents, and take the toll and pety Customes payable to the Lord 22 l. *annuatim*, because he pays a certain sum, 11 Hen. 6. 14. pl. 4.

The

The Count against a Bailly, 1. of a Court or Hundred. 2. of a Mannor, &c.

Counts that from such a day to such a day he had the administration *de bladis, fœnis, equis, bohus, vaccis, porcis, bidentibus, carucis, ac de omnibus aliis rebus, &c. & de, &c. ad merchandizandum & proficuum faciendum, &c. & ad rationabilem Computum, &c.* *Lib. Intra. 17. A. Sēd. 1. vide more Lib. Intra. 17. a, & b. sēd. 1, 2, 3, 4, 5. fol. 17. b, & c. sēd. 1, 2, 3, 4, 5, 6.*

The Plaintiff ought to Count that the Defendant was Bailly of the Mannor-house and Lands, &c. and yet it is not material whether he had the Mannor-house, &c. for the Receipt charges him, *9 Edw. 3. 356. pl. 38. Stoner. 27 Edw. 3. 29. pl. 25.*

He need not count the things particularly, because it may be shewed before the Auditors, *Grook 1 Hen. 8. 153. pl. 2.* where he is to charge him particularly.

But the Book of *49 Edw. 3. 13. 14 Hen. 4. 14.* says, that it is material. *Q. inde.*

If Account be brought against one that by Custome ought to gather the Rents, the Count must be special, *21 Hen. 7. 76. pl. 23.* because the Custome makes the case to be special.

The Count was against one as Bailly of a house and merchandise occupied by Joynt-tenants, *ex quacunque causa seu contrahū. Lib. Intra. 18. A. sēd. 6.*

The Count was, that he was Bailly at the Feast of *St. Michael*, and good, because it shall be intended

intended th' Archangel, *Coke 11. part 39. A. Metcalfes Case, 20 Hen.6.23.*

The Count was against a Tenant *per Elegit*, that he had made waste to the value, &c. *Old. Nat. br. 34.*

Conusor counts that the Conusee had levied the sum, or that he had levied part, and tendered the remnant, *47 Edw.3. 11. pl. 9. and fol. 25. pl. 63.*

And so of the Assignee of a Conusor, *25. Ed. 3. 53. pl. 17.*

The King is not held to Count against one as Bailly, but may alledge generally in his information, *quod ille ad computand. Domino Regi tenetur*; and if it be against Executors, *quod is tempore mortis sue tenebatur. Coke 11. part. 90. Devou-shers Case.*

The Writs against a Bailly, 1. of a Court or Hundred, 2. of a Mannor, &c.

*In Com-
zatu.*

Rex, &c. Precipimus tibi quod Justicies I: B. quod justè, & sine dilatione reddat B. rationabilem computum suum de tempore quo fuit Ballivus suus in M. sicut rationabiliter monstrare poterit, quod sibi reddere debeat, ne amplius inde clamorem audiamus pro defectu justitie, Teste, &c. Regist. orig. 135 A.

In London, Regist. orig. 135. A.

For Executors, Regist. orig. 135. A.

For Merchants, Regist. orig. ibid.

In Banco Rex, &c. Precipe A. quod justè, &c. reddat B. rationabilem Computum suum de tempore quo fuit Ballivus suus in N. & nisi fecerit, & pradiatus B. fecerit,

fecerit te securum de clamore suo prosequendo; tunc summ. per bonos summonitores prædictum A. quod sit coram Justic. nostris apud Westm. à die Pasche in quindecim dies ostensur. quare non fecerit: & habeas ibi summ. & hoc breve Teste, &c. Regist. orig. 135. b. Nat. br. 117. E.

It lies for a man and his Wife. *Regist. orig. 135. b.*

For a Master of a house. *Regist. orig. 135. b.*

For a Prior in the time of his Predecessor. *Regist. orig. 135. b.*

For an Executor and an Abbot Co-executor. *Regist. orig. 135. b.*

But there is another form of a Writ founded upon the Statute of *Marlebridge, cap. 23. Nat. 117. H. orig. Regist. 135. b.*

Account against B. as Bailly and Receiver in K. a good bar to the Writ, that he was not Bailly nor Receiver in K. 21 *Hen. 6. 21. pl. 42. Vide 44 Edw. 3. 1. pl. 2.*

The Writ ought to comprehend the County. 10 *Edw. 3. 365. pl. 19. Shard.*

If it be brought against one as Receiver, where he was Bailly, it shall abate. 3 *Edw. 3. 70. pl. 28. 18 Edw. 4. pl. 17.* For the Law takes notice of them as distinct and different employments.

But one Writ may comprehend Bailly and Receiver. 9 *Edw. 3. 356. pl. 38. Nat. br. 116. P. 21 Hen. 6. 21. pl. 42. Regist. orig. 135. b.* For a man may be charged in a double capacity, and if he rightly charged either way it is gone.

*The process against a Bailly, 1. before appearance;
2. after appearance.*

At the Common Law the Process was but a distress infinite, *Coke 3. part. 12. A. Harberts case.*

But by *Marlebridge, cap. 23. a Capias* was given, *Coke 3. part. 12. A.*

And per *Westm. 2. cap. 11.* process of Outlawry is given, *Coke 3. part. 12. A. 17 Edw. 2. process 203. 17 Edw. 3. 59. pl. 55. Shard. 29 Ed. 3. 5. pl. 13.*

But against Tenant by Elegit, is but a *Scire facias*, *21 Edw. 3. 2. pl. 6. 5 Edw. 3. 159. pl. 20. Regist. judicial. 73. b. Old Nat. br. 34.*

And if they appear not being summoned, judgment shall be given against them, *5 Edw. 3. 159. 21 Edw. 3. 1.*

Conusor shall have a *Scire facias* against the Conusee, *Coke 4. part. 67. b. 47 Edw. 3. 11. pl. 9. & fol. 25. pl. 63.*

So the Assignee of a Conusor, *25 Edw. 3. 53. pl. 17.*

If a Bailly come in by *Capias* or *Exigend.* he shall be forthwith committed to the Fleet, *29 Edw. 3. 35. pl. 63.* for his contempt in not appearing before.

So if he come in by Distress, and the Account be adjudged, *29 Edw. 3. 35. pl. 63.*

But if the Account be adjudged, and he be not present in Court, a *Capias ad Computandum* shall issue out against him, *1 Edw. 3. 2. pl. 10. 1 Hen. 7. 1. pl. 1. Townsend, Lib. Intra 18. c. Sec. 1, 2, 3.*

The

*The Bar for a Bailly, 1. to an action of Account ;
2. before Auditors.*

A good Bar, that he did account before Audi- Account
tors, 25 *Edw. 3. 39. pl. 1. 2 Edw. 3. 45. pl. 13. Lib. before*
Intra. 17. A. Sed. 1. he shall shew the time and the Auditors.
Auditors.

But in pleading he ought to say, that the Au-
ditors were assigned by the Plaintiff only, and not
by his assent, 29 *Edw. 3. 40. pl. 21.* +

A good Bar, that he did account with the Plain-
tiff himself. *Lib. Intr. 18. A. & B. Sed. 6. 11 Rich.*
2. Statb. Account 46. 45 Edw. 3. 14. pl. 13.

But it is no Bar to say, he did account with the Nobar.
Plaintiff after that he had imprisoned him, 22
Edw. 3. 13. pl. 32.

Account per Executors a good Plea, that he
did account to the Testator, and shews an Acquit-
tance of the Testator. 1 *Edw. 3. 2. pl. 10.*

Heir Frank-tenant a good bar, 28 *Edw. 3. 90.*

An Abbot brought an account against B. as Bai- Property.
ly of his Predecessor, and the Defendant pleads,
that he had a Lease of his Predecessor for 3 years,
and entered after the end, and found certain things
there; this is a good Bar, 16 *Edw. 3. 368. pl.*
30.

The Defendant said, that it was debated be-
tween the Plaintiff and his Wife, and it was a-
greed, that the Wife should have the Land for
her maintenance, and she leased to the Defendant
rending Rent; this is a good bar, 47 *Edw. 3. 18.*
pl. 34.

An account for the delivery of three Tuns of
Wine; a good bar for the Defendants to say,
B 2 that

that the Wife was a common Taverner, and that they were Bailies for the Sale thereof, without the assent of him, and that she sold and paid the Plaintiff, without that, that they were his Bailies in any other manner, 13 *Rieb.2. Account* 50.

Defendant pleads a Lease to him of the Mannor, a good bar, 49 *Edw.3.7.pl.11.*

Account of a House and Goods: it is no Plea to say, he bought the goods of the Plaintiff; but must say without that, that he was his Bailly for Account-render, 49 *Edw.3.7.pl.11.*

Payment. Payment by command of the Plaintiff, a good bar in discharge, *Coke 11.part.38. B. Metcalfs case. 1 Edw.5. 42 Edw.3.6. pl.21.* But this is before Auditors, and not in bar of the Action.

Servant. The Defendant said, that he was Servant to the Plaintiff, and he did chase the Cattel out of the field, without that, that he was Bailly in any other manner; for if the Cattel are hurt he shall have an action of the Case, 7 *Hen.4.14. pl.18.*

He was his Surveyor, without that, that he was his Bailly, 4 *Edw.3. Account* 34.

Statute-Merchant. The Defendant said, that the Plaintiff granted by Deed, and shews, that when he came to C. he was to acknowledge a Statute Merchant, that the Account should not be, and shews likewise, that he did it; this is nothing without saying, he delivered it to the Plaintiff, 20 *Edw.3. Account* 79.

Vendee. *Q.* Account for the delivering of Tyn, &c. the Defendant said, that he delivered this, and took an obligation in the name of the Plaintiff; this is no bar, 28 *Hen.8.Dyer 29.pl.193.* for he had no authority to take the Bond,

Bailly

Bailly of Woods to sell; it is no Plea to say, he had not sold them, because this comes in debate before Auditors, 14 Edw. 3. Account 131.

The *plt.* after judgment for him *quod Comput.* dies, his Executors shall have a *Scire facias*; the which being served, if he appear not, an *Exigend.* shall issue out against him, 14 Hen. 4. 1.

The Judgment against a Bailly, 1. of Account; 2. to Recover the things,

The Judgment is, *Quod Computet & ideo in misericordia, quia prius inde non Computavit.* Coke 11. part. 38. A. Metcalfs case. Lib. Intra. 19. b. sect. 1. & 20. D. sect. 1. 1.

Quod computet for parcel, and Bar for the remnant, Lib. Intra. 22. A. sect. 12.

The Judgment is, *Ideo consideratum est quod predictus W. recuperet versus prefat. M.* as much as he shall be found in Arrearages, & dampna occasione implacitationis, &c. Coke 11. part. 40. A. Metcalfs case. 2.

Scire facias against Tenant per Elegit to Account, and not appearing upon garnishment; the Judgment was, that the Plaintiff shall recover his Lands without any more process upon the cause of the Account, &c. 5 Edw. 3. 159. pl. 20.

Execution against a Bailly, 1. per Common Law; 2. per Statute Law.

By the Common Law he shall have but a *Levari facias*, or *Fieri facias*. Coke 3. part. 12. A. Harberts case. And this within the year only, for 1.

if the year pass, he was put to his Action of debt, if the process were not continued, 33 Hen.6.49. pl.33.

2. Per Westm.2. cap.45. a Scire facias is given after the year.

And per Westm.2. cap.18. Elegit is given. Coke 3. part.12.A.

And per Marlebridge, cap.23. and Westm.2. cap.11. Capias is given in process:

And per consequence a Capias ad satisfaciendum after Judgment, Coke 3. part. A.12.

And by the Statute of Westm. 2. cap. 11. If an Accountant be found in arrearages before Auditors, he shall be Committed by the Auditors to the next Goal in execution.

But then the Auditors ought to Commit him to prison forthwith. Coke 8. part. 119.b. Bonham's case, 27 Hen.6.8. Com.17.

But if he Account before the *pls.* he cannot Commit him to prison, 45 Edm. 3.14. because he shall not be Judge in his own cause.

Ex parte Talis by a Bailly.

Per Westm.2. cap.11. if Auditors be assigned by the party which will not allow to the Accountant reasonable allowances, or charge him with a thing he never received, and Commit him to prison, he shall have a Writ *ex parte talis.* Nat. br. 129. F.4. Hen.6.18.A. pl.3. Regist. orig. 137.b.

But if Auditors be assigned by the Court, and they do not allow reasonable allowances, he shall not have this Writ, but shall shew it to the Court, and they shall make allowances, Nat. br. 129. F. 3 Edm. 3.56. pl.30.

If it be sued in *London*, and Auditors be assigned by the Court which will not allow, &c. there this Writ lieth, *Nat.br.129 F.*

But note in *Regist.orig.137.b.* is against it.go:2.

But if the Plaintiff assign Auditors there, then such Writ lieth, *Nat.br.129.I. Regist.orig. 137.b.*

The Writ shall be returnable before the Treasurer and Barons of the Chequer at a day certain, and a *Scire facias* in the Writ to warn the Plaintiff and Defendant to be there, *Nat.br.129.Regist.orig.137.*

*Account against a Receiver, 1. in Law ;
2. in Deed.*

The Court where it is to be brought,

IN the County Court, *Regist.orig.135.A.*

In *London*, *Regist.orig.135.A.*

In the 5 Ports, *Regist.orig.135.A.*

Before Justice of Peace, per 2. *Marlebridge, cap.8.*

Before Auditors, per *Westm.2.cap.11.*

In the *Com. Ban.* *Regist.135. Nat.br.117.E.*

Who shall have an Account against a Receiver.

Husband and Wife shall have an Account upon a Receipt *dum sola fuit*, 22 *Hen.6.39. pl.10.*

Executor shall have an Account, but this is per *Westm.2.cap.23. Nat.br.117.C.3 Ed.3.66. 7 Edm.3.209. 5 Edm.3.141.pl.7. 11 Hen.4.479.*

But one Executor shall not have an Account against his Companion. 11 Hen. 4. 79. pl. 20. for there is no privity betwixt them, and they have interest in the goods of Testator, in his right, and not their own.

If one have Judgment against a Receiver, and dies, his Executors shall have a *Scire facias*. 14 H. 4. 1.

If two Merchants occupy in Common and one die, his Executors shall have an Account against the other. *Nat. br.* 117. D. for the two Merchants had several Interests.

An Executor of an Executor shall not have an Account, but only by the Statute of 25 Edw. 3. cap. 5. Com. 190. 17 Edw. 3. 270. pl. 5.

Filius & bares non habebis breve de Computo versus Receptorem, quia pertinet ad executionem Administrationis bonorum defuncti. Regist. orig. 135. B. and therefore it belongs to the Executor.

Guardians of a Church against their Predecessors, 8 Edw. 4. 6. P. 5. shall have an account in right of the Parish.

And per 2. Marlebridge cap. 8. they shall have an Account against a Bailly or head Conntable of an Hundred, &c. for amerciaments, or not repairing High-ways.

Guardians and Parishioners shall have an Account against Constables and Churchwardens for Forfeitures of Alehouse-keepers, in the same manner as for other things by the Common Law, 1 Jac. cap. 9.

Two Joynt-tenants of goods, one of them delivers the goods to the other to render Account, one shall have an Account against the other. 43 Edw.

Edm.3.21. 12 Hen.4.18. Nat.br. 118.H. for here is a privity betwixt their several Interests.

The Sheriff levies Money upon a *fierifacias*, and does not deliver it to the *plt.* neither brings it into Court, the *plt.* shall have an account against him, *11 H.4.58. pl.8. 20 Hen.6.24.A. 21 Hen.6.5.A.* Or the party may move the Court against him.

If one testifie by his deed, that he received 20 *l.* to bestow for me, I shall have an Account, *Hen. 8. Dyer.20.pl. 118. 11 Hen.6.39. pl.31.* for the privity appears by the deed.

So if one receive Money to my use, *Nat.br.117. 2. 6 Hen.4.7.pl.33.* But here I must prove the Receipt, though I need not in the former case.

So if *A.* deliver Money to *B.* to deliver to me. *Nat.br.117. 2. 13 Hen.4. pl.1. Haukeford, Nat.br. 138.A.* I shall have an Account upon the privity in Law, and *A.* may have an Account upon the privity in Fact. 2.

A. indebted to *B.* in 200 *l.* *B.* prays *C.* to receive this for him. *A.* prays *C.* to borrow this to pay *B.* *C.* borrows it of *D.* to pay to *B.* but pays it not at the day. *A.* was bound to *D.* for re-payment. *B.* shall have an Account against *C.* for this Money belongs to *B.* inasmuch that *C.* had his warrant to receive it, *Hill. 12 Jac. Com. Ban. Harrington versus Dean:* and so there is a trust and privity betwixt them.

A. delivers Money to *B.* to deliver to *C.* and he pays it not, *A.* shall have an Account against him. *Crooke 21 Hen. 7.69. pl.2. per Fromicke.* Q. if *C.* may not have an Account.

The King shall have an Account, if goods be King. devised

devised to him, against the Possessor in whose handssoever they be, *Coke 11. part. 90. A. Devou-
shers case. 40 Affi. pl. 35. per Prærogativam suam.*
For wheresoever the King hath equity, the Law
will not be deficient to him.

If one takes goods which appertain to the
King, claiming them to his own use; yet the King
shall have an account, *Coke 11. part. 90. A. 33
Hen. 6. 2. 35 Hen. 6. 27. B. Nottingham. 8 Eliz.
Dyer 249. pl. 83.* For the right being disputable,
the Law will judge the Kings claim to be true ra-
ther than the others; for the King can do no
wrong in the eye of the Law.

Two offer to be bound for *A*, that he shall serve
the King truly in such an Office, and they present
him to the King, and he doth not perform his
Office, they shall account to the King, though
they are not bound, *Coke 11. part. 92. B. Devou-
shers case. 30 Edw. 3. Rott. 6.* For the King re-
posed trust in them, and he shall not be prejudiced
by them.

If one be entituled to an action of Account,
and be outlawed, the King shall have an Account
for it, *28 Edw. 3. 92. pl. 10.* for he comes in the
stead of the party outlawed.

If one be indebted to the King and dies, the
King shall have an account against his Executors
or Tertenant, *5 Eliz. Dyer 225. pl. 33.* At his
Election *Q.* whether against both.

Against whom Account lieth as Receiver.

It lies not against a Prentice, *Nat. br. 119. D.
7 Hen. 4. 14. 8 Edw. 3. 310. pl. 26.* for there is no
Writ in the Register against a Prentice; *Coke
11. part.*

11. part. 89. B. *Devoushers* case; for a Prentice is not *sui juris*.

Per 2. *Marlebridge*, cap. 8. Churchwardens shall have an account against a Bailly or head Constable, for amerciaments for Highways not repaired.

It lies against the Husband for the receipt of the Wife, *Nat. br.* 118. F. for her Receipt is his Receipt. 2. If the Receipt was *dum sola fuit* it seems it doth.

It lies against a Deputy of a Receiver, for he receives this to the use of his Master, *Nat. br.* 119. B. 4 *Edw.* 3. 100. pl. 8. therefore the Master shall have account.

It lies not against an Executor, *Nat. br.* 117. C. Executor. *Littleton*, *Regist. orig.* 135. B. *quia mere pertinet ad curam Christianam cognoscere de computo reddendo versus executores*, 48 *Edw.* 3. 2. 4. *Edw.* 4. 25. 2.

But if an Executor will account, he shall be charged afterward, 2 *Hen.* 4. 13. pl. 2. 19 *Hen.* 6. 5. A. *Fortescue*; for he hath waved the Spiritual Court.

Note in the case of the King he shall have account against Executors, *Littleton*. For he may recover his right by what Law he pleaseth.

It lieth not against an Infant, *Nat. br.* 118. D. because he hath not discretion to account, and so may wrong himself in his Account; and per. 21 *Edw.* 3. 8. pl. 21. *Regist. orig.* 135. A. 26 *Edw.* 3. 63. he cannot wage his Law, because he must perform his Law by taking his Oath.

It lies against a Woman or Chaplin, *Nat. br.* 118. D. viz. a Feme sole.

Churchwardens shall have an account against their Predecessors, 8 *Edw.* 4. 6. pl. 5. for they are persons intrusted by the Parish.

Two

Two being bound, both of them to Account, and each of them of the whole; *quere* if Account lies against one only, 5 *Edw. 3. 141. pl. 8.*

It lies not against a Parish-Priest that hath the Offerings, for the Clark holds the vessel in which they are put, *Nat. br. 119. E. 25 Edw. 3. 46. pl. 32. vide 11 Rich. 2. Jurisdiction 18.* and he is not tied to be responsible for his Clark.

The King grants the Toll of a Village to the Inhabitants, and in the said Village there were certain Collectors to receive it, the Village shall have a Commission out of the Chancery against him that receives this Toll, to hear and determine it, and to hear their Accounts, &c. *Nat. br. 119. F.*

If any takes the goods of the Kings Debtors which dies, the King shall have an Account against him, *Coke 11. part. 93. A.* For the Law creates a privity in case of the King, for the preservation of his Revenue.

It lies for the King against a Debtor, or his Executors or Tertenents, 5 *Eliz. Dyer 225. pl. 33. Com. 321. Mynes.*

But if one purchase to him and his Wife, and he become indebted to the King, and die, his Wife shall not be charged, 5 *Eliz. Dyer 215. pl. 33. Contra*, if he be first in debt, and purchase but a Chattel, 5 *Affiz. pl. 5.* For the Feme had an interest in the Land made by the Husband, and she shall not be charged with her Husbands debt; but the Executor of the Husband.

If one be an Accountant to the King, and become indebted to the King, and afterward sell a Lease for years, the Vendee shall not be charged, because it is but a Chattel, *Coke 8. par. 171. A.* and it

it was lawful for him to buy it, and might not know the Vendor to be an Accountant.

One in debt to the King purchases Lands with the Kings money, to the use of some Friends in Fee *per covin*, and yet takes the profits, the King shall have the Lands in execution, 5 *Marie Dyer* 160. *pl. 41.* 24 *Edw. 3. Rot. 4. Coke* 11. *part. 92. B. Devoushers case.* For the Law abhors Fraud in all parties, but especially where the King is concerned.

For what things Account lieth against a Receiver.

A. delivers three tuns of Wine to *B.* to sell, he shall have an Account against him for them; but then he ought to count of the receipt of every sum received of every several man, 43 *Edw. 3. 21. pl. 11.* 46 *Edw. 3. 3. pl. 6.* 46 *Edw. 3. 9. pl. 4. Hill.* 43 *Eliz. Com. Ban. Rot. 1707. Tresham against Ford.* *A* indebted to *B.* and *C* indebted to *B.* *A* sends money to *B* by his Servant, which accepts of it for the debt of *C*, and not for the debt of *A*; yet *A* shall have an Account against *B*, because he cannot accept of this in any other manner than the other tendered it, which was, to satisfy his own debt.

If one receive money to my use he shall account for it, *Nat. br. 117. q. 6 Hen. 4. 7. pl. 33.* *Q.* if he receive it against my will or consent.

So if *A* deliver money to *B*, to deliver to me, *Nat. 117. g. 13 H. 4. pl. 1. Haukeford, Nat. 138. A.* I shall have an account, for it was delivered for my benefit: *Q.* if *A* shall not have an account.

He which ought to pay me an Annuity, pays this to another to pay me, or if my Tenant pay it
to

to another to pay me, I shall have an account against him that received it, or I may charge my Tenant notwithstanding the delivery of it, so not a double remedy, 6 *Hen.4.8.pl.33.*

A delivers Money to *B* beyond the Sea to be paid in *England*, he shall account for it to *A*, because the payment was to be made in *England*, and that was the ground of the delivery of it. *Nat.br.*

118. *G. 41 Edw.3.3.*

Money delivered to one upon the performing of a Condition, if the condition be not performed the money to be re-delivered, he shall account, *Nat.br.118.G. 41 Edw.3.10. 18 Hen.8. Dyer 22. pl.135. 11 Hen.6.39. pl.51.* for the Condition implies an Account, if not performed.

A leases Tithes to *B* rendring Rent: *A* being indebted to *C*, assigns *B* to pay this. No account lieth for this, 5 *Edw.4. 140, 141.* for if it be not paid *A* may have his Action for the Rent, and *B* is not a Receiver in this case.

If goods be devised to the King, account lieth for them, *Coke 11.part 9.A. Devonsheers case.* For the King may use what Action he will to recover his right, and no injustice is done to any by this Prerogative.

If one take goods of the Crown, and claim them as his own proper goods, yet he shall account for them, *Coke 11.part. 90.A. 33 Hen.8.2. 35 Hen.6. 27. B. 18 Eliz. Dyer.249. pl.83.* For such taking doth not develt them out of the Crown; for though he may have right, yet such taking is not the proper way to recover them.

*The Account against a Receiver, 1. by other hands;
2. by his own hands.*

1.

The Account was, that he was a Receiver till such a time, until, &c. within which time he received of the moneys of the Plaintiff 10*l.* by the hands of B, and 10*l.* by the hands of C; for B and C here shall be accounted but as Servants to A, except the contrary be shewn, *Lib. Intra. 19. C. & D. 1, 2, 3. fol. 20. A. Sect. 4.*

Account of the Receipt of Moneys by the hands of the Wife and a Stranger not good, because they ought to have been several Issues, 43 *Edw. 3. 33. pl. 34.* For the Receipt of the Wife is the Receipt of the Husband, and therefore as to her the account ought not to be *per autre maine.*

But if the Account be of the delivery by the hands of the Wife of the Plaintiff, it had been good, 5 *Edw. 3. 146. pl. 6.* Count of Bailment by the hands of a Servant of the Plaintiff, *Hill. 4 Eliz. Com. Bar. Rott. 1707. Tresham versus Forde.*

Note the difference between the bailment of the wife, and the Receipt of the wife.

And so it is of the delivery of a Stranger, and the Wife of the Plaintiff, 43 *Edw. 3. 33. pl. 34.*

Account that the Defendant sold a thing to A, and received 20*l.* for it, and another thing to another, and received of him 10*l.* this is nought, for the 10*l.* and good for the remainder, 46 *Edw. 3. 3. pl. 6.* Because it is not said to whom the other thing was sold; and so there can be no issue joyned.

Baron and Feme count, that the Defendant *suit* *Viz. an* Receiver to the Testator from such a time to Executrix, such a time, and received by the hands of B, &c. and did not account to the Testator neither to the Executrix

Executrix *dum sola fuit*, neither to them after the coverture. *Lib. Intra. 20. A. Sed. 4.*

2. Account against a Husband upon the receipt of his Wife shall be by the Husbands own hands, *Nat. br. 118. F. viz.* the count shall be that the Husband receive it, for the receipt of the Feme is the receipt of the Baron.

Bar. Bar in detinue is a bar in account, *per Brian. 2 Rich. 3. 14. pl. 19*, for the one and the other affirm property, and suppose a detainer.

Coverture. The Defendant said, that the Plaintiff at the time, &c. was under covert Baron, and this was good, *6 Edw. 3. 184. pl. 5. Vide 18 Hen. 6. 3. pl. 3. 2 Hen. 7. 15.* for then she had no power to sue.

Delivery. Delivery to another by the command of the Plaintiff *Male*, for it is too general; but to say, that he was Bailly to the Plaintiff to deliver to B. of the which he had a deed, this is good; because he had not confessed it by the account render, this being special matter of justification. *19 Hen. 6. 5. pl. 10. 26 Hen. 4. 9. pl. 7. 30 Hen. 6. 5. pl. 4. 41 Edw. 3. 31. pl. 37. Lib. Intra. 20. A. Sed. 5.*

Account against a Carrier, who said, that goods were delivered to him to deliver to B. which he had done without that he was Receiver in any other manner; this is a good bar, *per custome d'Angleterre. Mich. 40, 41 Eliz. Com. Ban. Burrel versus Callice.*

So if the *plt.* deliver to one *20 l.* to carry to the Lombard to be exchanged, and he brings a Bill of exchange for the money and traverseth, without that, that he was a Receiver for account render, for by this he doth not confess the receipt for Account-render, *5 Hen. 5. 4. pl. 10. 28 Hen. 6. 9. pl. 1. 3 Hen.*

3 *Hen. 6. 4. pl. 4.* but justifies by a special Receipt. So if the Plaintiff deliver to one 20 *l.* to obtain a discharge under the great Seal of the Customs for 10 Hogheads of Wine, the which he hath done; this is good, 30 *Hen. 6. 5. pl. 4.* for the former reason.

Re-delivery to the *plt.* without acquittance not good, 39 *Edw. 3. 19. pl. 21.* for he confesses thereby the Receipt, and therefore it is reason he should account. Redelivery.

So if it be with an Acquittance, 3 *Edw. 3. 52. pl. 13.* because by this he hath confessed the receipt for Account-render, and he may plead the Acquittance before the Auditors.

But this is good before Auditors, 29 *Edw. 3. 35. pl. 1.* in discharge of the Account, though it was not good in bar of the Action.

The Defendant pleads, that he, as Messenger of the Plaintiff, received of *C* such a sum, being Provost to the Plaintiff, and this he paid and delivered to the Plaintiff; this is no bar to the Action, because by the Receipt he is liable to the Account, 6 *Edw. 3. 185. pl. 7.* 29 *Edw. 3. 20. pl. 11.* but it may be in discharge of the account.

An account of a Receipt by the hands of *B.* Mort: 1. of *May* till the first of *July*; it is no plea that *B* was dead the third of *May*, because he may receive this the second of *May*. 8 *Hen. 6. 32. pl. 28.* and so accountable by his own shewing.

A delivers 20 *l.* to *B* to redeliver; *B* binds himself to pay this; no bar in account, 4 *Edw. 3. 125. pl. 45.* for the obligation is but additional security, and alters not the nature of the bailment. Obligation.

Payment.

Defendant pleads, the Plaintiff being in his debt, commands him to receive of B so much to his own use as will satisfy his debt; which he doth without that, that he was his Receiver for Account-render, and good, *Lib. Intra. 20. A, & B. sect. 6. 5 Edw. 4. 29. B. Brian.* For there is difference betwixt a receiving by way of satisfaction, which is to the Receivers use; and a Receipt *per* Account-render, which is for anothers use.

But if he confess the Receipt upon account, and he commands him afterwards to retain the debt, this is no bar of the Account by reason of his confession; 28 *Hen. 6. 7. pl. 9.*

Robbery.

No plea; that he was Factor and was Robbed, in bar of the Action; but a good plea before Auditors, *Coke 4. part. 84. A. 41 Edw. 2. 2. pl. 9.* in discharge of the Account; yet *quare*, if he was robbed by the Kings Subjects.

Vendee.

Vendee and takes an obligation no bar, 28 *Hen. 8. Dyer. 29. pl. 193.* for that is for his own security that made the sale, and not the Owner of the goods.

Unifon Receiver.

Upon Receipt by others hands, a good plea that he was never Receiver by their hands, 10 *Edw. 4. 8. A. 7 Edw. 3. 259. pl. 13. 8 Edw. 3. 285. pl. 34. 7 Edw. 3. 242. pl. 1. 24 Edw. 3. 66. pl. 74. 25 Edw. 3. 39. pl. 24.* for this destroys the very gift of the action.

But 5 *Edw. 3. 159. pl. 22.* this is not good; but shall say generally, that he never was his Receiver. *Q. Car moy semble c'est n'est ley, si il soit charger come Receiver per autre maine.*

If one testifie his Receipt by deed, he cannot plead, that he never was his Receiver, 10 *Edw. 3.*

383. pl.

383. *pl. 18.* for he is estopped by his own deed to plead so, the Law will believe a mans deed rather than his bare averment.

Defendant pleads, that he is Executor of B, and that he received the money as a debt of B; this is not good, because the Plaintiff supposeth him his Receiver; but he ought to say without that, that he received it as the money of the Plaintiff, *11 Hen. 4. 79. pl. 20.* *13 Hen. 4. pl. 1.* for such a traverse doth destroy the Plaintiffs supposal.

Note, if the Receipt be by the hands of the Plaintiff, the Defendant may wage his law. *7 Edw. 3. 269. pl. 52.* viz. that he oweth him nothing, because it may be a thing acted in private betwixt them, where the Nay of the Defendant is as much to be credited as the Yea of the Plaintiff.

So upon the delivery of the Wife of the Plaintiff, *13 Hen. 4. 8.* *43 Edw. 3. 33. pl. 31.* for Husband and Wife are one person in Law.

But upon a Receipt by other hands he cannot, *9 Eliz. Dyer 265. pl. 2.* *22 Hen. 6. 39. pl. 10. 5 Edw. 3. 159. pl. 22.* *33 Hen. 6. 8. B. Moyle*, because the Receipt lies in notice of the Countrey, upon which an issue may be joyned, and a trial had.

An Executor brought an Account upon the delivery of the Testator, the Defendant cannot wage his Law, *7 Edw. 3. 269. pl. 52.* for the delivery and the receipt was not acted betwixt them.

Outlawry of the Plaintiff after the Receipt a Outlawry. good bar, although he had a Charter of Pardon, *28 Edw. 3. 92. pl. 10.* for the Defendant is not bound to take notice of the Pardon until it be pleaded.

Accord.

A good plea, that after the Receipt he married the Daughter of the Plaintiff, and it was then agreed, that he should keep the money, 12 *Hen.4. 18. A.* for by this agreement the former contract in Law is destroyed.

So if that he put the money in a bag, and agreed that he should keep it in lieu of a debt, 28 *Hen.8. pl.9.* for the same reason.

Delivery and Re-delivery.

Delivery over by command of the Plaintiff, a good plea, 19 *H. 6. 5. pl. 10. Lib. Intr. 20. A. Sect.5. 42 Edw.6. pl.21.* for by this command the former trust is made void.

Re-delivery.

A Re-delivery is a good plea without an Acquittance, because he cannot compel the Plaintiff to make an Acquittance, because he received but his own goods, 29 *Edw.3.35. pl.1. 6 Edw.3.185. pl.7. 29 Edw.3.20. pl. 11.* but it seems it may be a good plea before Auditors. *Q.*

Expences.

Expences reasonable shall be allowed to a Factor, 3 *Edw.3.56. pl.30.* for the labourer is worthy of his hire.

A Factor pleads, that he was robbed, *Coke 4. part.84. A. Southcots case 41 Edw.3.3. pl.9. vid. Antea, Q.*

So for goods lost by Tempest, 3 *Edw.3: 56. pl. 30. 41 Edw.3. 3. pl.9.* For here is the hand of God, which could not be avoided, and therefore the party not to be punished.

So for goods sold under value, by reason of War, 3 *Edw.3. 56. pl.30.* because of the necessity of the time.

Defendant

Defendant said, he received money in full satisfaction of a debt of another, &c. This was held void, because he did not name that he never was his Receiver, the which was found before *Hill. 43 Eliz. Com. Ban. Rott. 1707. Treslams case*; so that his plea doth not answer the Plaintiffs Declaration.

Receipt in Satisfaction.

Vendee of goods takes an obligation in the name of the Plaintiff, a good plea, *28 Hen. 8. Dyer 29. pl. 193.*

Vendee.

But then he ought to shew that the obligor was sufficient to pay at that time, *3 Edw. 3. 56. pl. 30.*

The Judgment against a Receiver, 1. to Account; 2. to Recover.

2. The Judgment is, *quod computet, & ideo in misericordia quia prius inde non computavit*, *Coke II. part. 38. A. Metcalfs case, Lib. Intra. 19. D. Sect. 1.*

Quod computet for parcel, and bar for the remainder, *Lib. Intra. 22. A. Sect. 2.* for if there be just cause to account for part, the Action is maintainable.

But if he confess part and traverse the other, no Judgment shall be till the other be tried, *41 Edw. 3. Account 34.* for it may be he is to account for all notwithstanding his traverse, which may be false.

The Judgment is, *Ideo consideratum quod pre-dictus W. recuperet versus prefat. M.* so much as he is found in Arrearages, & dampna sua occasione implacitationis, &c. *Coke II. part. 40. A. Metcalfs case.*

The King is not held to bring a particular Account against any as Receiver, but to declare generally, *quod ille ad computum domino Regi reddend. tenetur*: and against Executors, *quod tenebatur tempore mortis sue*, Coke 11. part. 90. Devoushers case; for the King is not tied to punctualities of Law, where no person is injured by his not obfervance of them.

In Comitatu.

The Writ against a Receiver.

In Com. Ban.

Writ at the Com. Law, by the Stat. of Marlebr. cap. 29.

Rex, &c. pr. A, quod iuste, &c. reddat B rationabilem computum suum de tempore quo fuit Receiver denariorum ipsius B, &c. Regist. orig. 135. & ibidem B. vide diversa brevia de computo versus Receptorem.

But there is another form of a Writ founded upon the Statute of Marlebridge, cap. 23. Nat. br. 117. H. Regist. orig. 136. B.

A good plea to the Writ, that he was Bailly and not Receiver, for otherwise he shall be twice charged, viz. as Bailly and Receiver, 3 Edw. 3. 70. pl. 28. 18 Edw. 4. 3. pl. 17. which the Law judges unreasonable, and will prevent by making the Writ certain.

A good plea to the Writ, that he was Guardian in Soccage, 18 Edw. 4. 3. pl. 17. and so not properly a Receiver, as the Writ supposeth.

The Writ shall be always general, and if the cause be special, it shall be set forth in the Count, Nat. br. 118. F.

2

The Defendant pleads the Receipt by deed, and demands judgment of the Writ without shewing it, this is no plea to the Writ; because the Receipt and not the Deed is the cause of Action, and he hath

hath confessed the Receipt, and the Deed appears not to the Court, 1 Hen.6.8. 28 Hen.8.Dyer 20. pl.121. But 9 Edw.4. 50. B. per Choke contra 2. Hen.6.9.quare.

No plea to the Writ, if it do not agree with the Plaintiff concerning the manner of the Receipt, 4 Hen.6.12.pl.4.

The Process against a Receiver, 1. before Appearance; 2. after.

At the Common Law the Process was but a distress infinite, Coke 3. part. 12. A. Harberts case.

But per Sat. de Marlebridge, cap 23. a *Capias* is given, Coke 3. part. 12. A. for more expedition; for Liberty is more precious than ones Estate in the eye of the Law.

And by Westm.2.cap. 11. Process of Outlawry is given, Coke 3. part. 12. A. 17 Edw.3. Process 203. 17 Edw.3. 59. pl. 55. Shard, 26 Edw. 3. 5. pl. 13. which is a more violent prosecution to bring the Defendant to do right.

A *Scire facias* shall issue against Tenant per *Elegit* to account, 21 Edw.3.2. pl 6. 5 Edw. 3 159. pl.20. Regist. Judicial. 73. B. Old Nat. br. 34. what profits he hath received out of the lands extended, and how far his debt is satisfied.

And if he come not upon Summons returned, Judgment shall be given against him, 5 Edw.3. 159. pl.20. 21 Edw.3.1. *Quod computet*.

Conusor of a Statute shall have a *Scire facias* against a Conusee to Account, Coke 4. part. 67. B 47 Edw.3.11.pl.9. & fol.25.pl.63.

So the Assignee of a Conusor, 25 Edw.3. 53. pl.17. both for the former reason upon the *Elegit*.

But then he cannot surmize, that it was appraised and found of base value, 17 *Edw.* 3. 36. *pl.* 6. For by the bringing of the Action he admits of a certain value to account upon, and such surmize is a matter *dehors*.

If a Receiver come in by a *Capias* or *Exigend.* he shall be forthwith committed to the Fleet, 29 *Edw.* 35. *pl.* 63. for his contempt in not coming in till compelled by force, which is a disturbance of the publick Peace,

So if he come in by distress, and the account be adjudged against him, 29 *Edw.* 3. 35. *pl.* 63. for then it doth appear he was a *Fort feisor*.

But if the account be adjudged against him, and he be not present in Court, a *Capias ad computandum* shall issue out, 1 *Edw.* 3. 2. *pl.* 10. 1 *Hen.* 7. 1. *pl.* 1. *Townsend*, *Lib. Intr.* 18. *Sec.* 1, 2, 3. to make it appear to the Court, whether he was to account or no.

If in Judgment given *quod computet*, the Plaintiff dies, the Executor shall have a *Scire facias*, which being served, if the Defendant appear not, an *Exigend.* shall issue forth against him, 14 *Hen.* 4. 1.

But if the Defendant be taken *per Capias ad computandum*, and dies in prison, a *Scire facias* lies not against his Executors, 10 *Edw.* 4. 7. 41. *Affize*: So that a *Scire facias* lies for an Executor, but not against an Executor; for the Executor may not be so privy to the receipts and payments of the Testator, as to know what to plead to the Account.

*Bar by a Receiver, 1. to an Action of Account ;
2. before Auditors.*

The Defendant pleads, he bought the goods of the Plaintiff, before he brought this Action for them, a good bar, 14 *Hen.4.* 19 *pl.21.* for thereby he claims the property in them. Bought.

The Defendant pleads, that it was agreed that he should be bound to the Plaintiff for the principal and use, the which he did ; this is a good bar to the Action, 22 *Hen. 6.55. pl.32.* for this drowns the former contract: otherways he ought to plead this before Auditors. 2. Whether it may be pleaded in bar of the Action, or in discharge of the Account before Auditors. It seems it is no plea before Auditors. Accord.

So if the Plaintiff grant, that if the Defendant pay 20 *l.* he will withdraw his Action ; this is a good bar to the Action, because of this Accord, 7 *Edw.3.325.pl.11.* 18 *Edw.3.39. pl.35.* which hath taken away the ground of the Action.

No plea, that he put it in a bag, and that the Plaintiff agreed that he should keep it in lieu of a debt ; because the Receipt for Account-render is confessed, 28 *Hen.6.7. pl.9.* and so it appears the Plaintiff hath cause of Action.

The Plea was, that he did account of such a Sum such a day, and year, and place, before A and B, Auditors assigned by the Plaintiff, a good Bar, *Lib. Intra. 19. D. Sect. 3. 25 Edw. 3. 39. pl.1. 2 Edw.3. 45. pl.13.* For they are Judges, and so shall not account twice for one sum.

The

The Plaintiff Counts of divers sums received between such and such a day, and the Defendant pleads to parcel of the time, that he hath fully accounted, and to the remainder, that he was not his Receiver; there he ought to shew of what he had accounted, 30 *Edw.3.1. pl.4.* for otherwise his plea is too general, incertain, and captious, which the Law will not permit.

That he accounted to the Plaintiff from three months to three months, and so to the time of the action, a good Bar, 39 *Edw.3.5. pl.22.*

A good bar that he did Account 1^o April; but then he ought to say, without that, that he was his Receiver after, 21 *Edw.4.66. pl.47.* 7 *Hen.4.14. pl.17.* 45 *Edw.3.14. pl.13.* 34 *Hen.6.44.*

Counts that he was Receiver for seven years, it is no bar that he accounted 1^o Maii Anno 5^o without answering for the two other years; because he is to answer for the whole time, as well for the increase as principal, 7 *Hen.6.5. pl.8.*

As to 20^{s.} received 1^o Jun. fully accounted for, and to the Receipt afterward, or before that he never was Receiver, 27 *Hen.6.1. pl.8.* a good plea.

A good bar *quod 21. Januarii Anno, &c.* at D, in the County of W, he fully accounted with the Plaintiff, *Lib. Intra. 20. B. Sec. 8, 9, 10, 11.* Before the Writ brought he did account with the Plaintiff, a good bar, 4 *Hen.6. 43. pl.4.*

But he ought to account to the Plaintiff before he is imprisoned, or else no bar; because it is *pendente lite*, and it appears the Plaintiff had cause of action, else he not not been committed, 22 *Edw.3.3. pl.32.* 7 *Hen.4.14. 34 Hen.6.44. pl.4.*

For

For the Plaintiff cannot commit him to prison, for *Westm. 2. cap. 11.* gives this power only to the Auditors, *45 Edw. 3. 14. pl. 13.* who are the Judges.

To an Account brought by Executors it is a good bar, that the Defendant did account to the Testator, and shew his Acquittances, *1 Edw. 3. 2. pl. 10.* for then the Executors have no colour of action.

The Defendant pleads an award made by Arbitrators, that he should re-deliver the goods, this is nought; but if he had been charged only with the safe custody of them, then good, *2 Hen. 5. 2. pl. 6.* For the Defendant is chargeable to Account for the provent of the goods, as well as for the goods themselves.

Account upon a Receipt by other hands, Arbitrement is a good bar, *22 H. 6. 39. pl. 10.* For the submission to the Arbitrement creates a new Contract.

Execution against a Receiver, 1. per Common Law ;
2. per Statute Law.

1. By the Common Law it was but a *Levari facias*, or *Fieri facias*, *Coke 3. part. 12. A. Harberts* case; to levy the arrears upon his Lands, or Goods and Chattels. *Q.*

And this only within the year; for if the year was past, then an Action of debt only lay upon the Judgment.

Unless the Proceſs be continued, *33 Hen. 6. 49. pl. 33.* For the Court will not grant out Executions upon sleeping Judgments, for this may prove dangerous.

2. Per *Westm. 2. cap. 45.* a *Scire facias* is given after

after the year, *Coke 3. part. 12. A.* upon the Judgment against the Defendant, to shew why he should not pay the Arrears due to the Plaintiff by the Judgment.

Per Marlebridge, cap. 23. & Westm. 2. cap. 11. 2 Capias was given in Process, and by consequence a *Capias ad satisfaciendum* in execution, *Coke 3. part. 12. A. Lib. Intra. 18. C. Sed. 1, 2, 3.* which are both to lay hold on the person of the Defendant.

Per Westm. 2. cap. 11. if the Accountant before Auditors be found in Arrearages, he shall be committed by them to the next Goal in execution: the same law is, if he will not account before the Auditors, 10 *Edw. 3. 387. pl. 28.* when he is adjudged by the Court to do it.

But this shall be forthwith, *Coke 8. part. 119. B. Bonbams case, 27 Hen. 6. 8. Com. 17.* for the Statute being penal must be strictly pursued.

But if he account before the Plaintiff he cannot commit him to Prison; for the Statute saith before Auditors, 45 *Edw. 3. 14. pl.* and no imprisonment lay before the Statute.

But an Accountant to the King shall be imprisoned, and his goods and lands in execution *per the Common Law, Coke 3. part. 12. B. 5 Eliz. Dyer 224. Com. 32.* which is tender of the King as well in his Revenue as his Person.

Ex parte talis.

Per Westm. 2. cap. 11, if Auditors be assigned by the party Plaintiff, who will not allow reasonable charges to the Receiver, or charge him with a thing he never received, and then commit him to prison, he shall have this Writ, *Nat. br. 129. F. 4 Hen.*

Hen. 6.18.A.pl.3. Regist.orig.137. B. which is in the nature of an *Audita querela*.

But if Auditors be assigned by the Court which do not make allowance; yet the Defendant shall not have this Writ, but may complain to the Court, and they shall order them, *Nat.br. 129.E. 3 Edw.3. 56. pl.30.* to do justice; for they are Ministers of the Court, and to be answerable for their actions.

If one be sued in *London*, and the Court assign Auditors, who make not allowance, &c. the Defendant shall have this Writ, *Nat.br.129.F.* But note *Regist.orig.137.contra, Q.*

The Writ shall be returnable before the Treasurers and Barons in the Exchequer at a certain day, and a *Scire facias* in the Writ to warn the Plaintiff in the Account, and also the Delendant to be there, *Nat. br. 129.G, & H. Regist.orig. 137. vid. Westm.2.cap.11.*

Note, that an account lieth in one Writ against a Bailly and Receiver, *Nat. br. 116. P. 21 Hen.6.2.1. pl.42. 9 Edw.3.356.pl.38, & pl.40. 14 Hen.4.20. pl.25. vide the Writ Nat.117.C. Regist.orig. 135.* For one and the same person may be Bailly and also Receiver at one time to one and the same person.

Vide the Count, Lib.Intra.17. B. Sect.1.

And for all the other parts they are in the same manner as is described before in Bailly and Receiver.



1. *Quid.*
2. *Quo-*
mplex.

Action upon the Case.

- Action upon the Case is either by
- | | | |
|--|---|--|
| 1. Doing of wrong to another, | { | 1. Inheritance Real.
2. Chattels Personal,
3. Body.
4. Name.
5. Suits in Law. |
| 2. Not doing of a thing, ought to be done by | { | Law to the wrong of { Inheritance Real,
Chattels Personal,
Corps,
Suits in Law.
Assumpsit { Inheritance Real,
touching { Chattels Personal,
Body,
Suits in Law. |
| 3. Misdoing. | | |
| 4. Negligence. | | |
| 5. Deceit in bargains | { | With warranty.
Without warranty. |
| 6. Trover and Conversion in | { | Deed.
Law, as to persons discontinued,
Wasting,
Denial to re-deliver. |

In what Court it lieth.

IN *Ban. Regis.*
In Com. Ban.

It lieth not in the Marshalsey, *Coke 10. part. 72.*
A. 76. A. Marshalsey. For that Court is limited to hold plea but in particular cases. But this learning was

was now out of doors, in respect that that Court was wholly taken away; but now again revived.

For doing of wrong to the damage of another, touching a thing hereditary, who shall have it.

Baron and Feme joyn upon an *assumpsit* to the Wife *dum sola fuit*, and good, *Hill. 9 Jac. Ban. Regis, Wolverton* and his Wife against Day. For else the party would be without remedy. Baron and Feme.

Baron and Feme joyn in *Trover* and conversion for a Deed for an annuity granted to the Wife, and it is good; for if he survive, he shall have the Deed, *Trin. 40 Eliz. Com. Ban. Kussel & Catesby. Q.*

Husband had an Action sole upon the *Assumpsit* to the Wife, and counted of the *assumpsit* to him, 27 *Hen. 8. 24. & 25.* for the *assumpsit* made to the Wife is made to the Husband.

Commoner shall have it for seeding his Common, though he be but a Copyholder, *Coke 9. part. 112. B. Mayes case.* For he is thereby damaged, and no other Action lies for him. Commoner.

But then it shall be such seeding by which he loseth his Common, or else cannot have it in that beneficial manner as he ought, *Coke 9. part. 231. A. Mayes case. De minimis non Curat Lex.*

Executor shall have it for putting him out of his Term by the Lessor, *Nat. br. 92. G. Regist. 97. Coke 4. part. 95. A. Slades case.* For a Term belongs to an Executor, except it be otherwise disposed of.

For money for Grain sold, *Lib. Intra. 4. B. Sect. 2.* the Court there. *Q. whether debt lies not.*

Upon an *Assumpsit* to the Testator, to marry one or pay 20 *l.* *Lib. Intra. 10. B. Sect. 5.* For by the

the Consideration the Testators estate is prejudiced, if the *assumpsit* be not performed.

Upon an *assumpsit* to save the Testator harmless of an obligation, *Lib. Intra. 12. B. Sect. 2.* for the Executor is liable to be sued upon it.

Feoffee.

If a Nuisance be made, and a Feoffment is made, if this continue as a new Nuisance, the Feoffee shall have an action, *Coke 5. part. 101. A. Penruddocks case.* For the Feoffee is thereby hindered of enjoying the best of his bargain.

Heir.

The Heir shall have an action for a Nuisance made in the time of his Father, if it be continued, &c. for the Inheritance is prejudiced thereby, *Coke 5. part. 101. A. Penruddocks case.*

Joynder.

Two cannot joyn for calling them false Knave and Thief, 28 *Hen. 8. Dyer 19. pl. 112.* for they are several slanders, and personal.

Two cannot sue in the Admiralty where one of them ought to have an Action at Law, 5 *Maria, Dyer 157. pl. 39.* for the Common Law is to be preferred.

Lessor.

Lessor shall have it against Tenant at will for voluntary waste, *Littleton 15. A. 14 Hen. 8. 12. Brown. Coke 5. part. 13. B. Salops case, 48 Edw. 3. 25. Dyer 121. pl. 17. 11 Hen. 6. 38.* for an Action of waste doth not lie.

But not for negligent or permissive waste, *Coke 5. part. 13. B. Salops case;* because he is not bound to repair.

Tenant in
Common.

Tenant in common shall have it against the other, for breaking a Gutter between their houses, 2 *Hen. 5. 3. pl. 12.* for sic *debes uti tuis ut aliena non noceas.*

For making a Lime-pit in his Land, which they
have

have in common, by which the water surrounds his house, 13 Hen. 7. 26. for the same reason,

Tenants in Common may joyn in an action for a Nuisance upon their Land committed, because this concerns all their profit, Mich. 7 Jac. Ban. Regis, Stone against Dromage.

For taking of a Meer-stone, 1 Hen. 5. 1. Lib. Intra. 9. C. sect. 1. for the Land may thereby be endangered to be lost.

2. *Against whom this lieth.*

It lies against an Administrator, upon an *assumpsit* of the Testator, Lib. Intra. 4. C. sect. 3. for he received benefit by the consideration, viz. their estate. Admini- strator.

Which cuts Trees without cause, 18 Edw. 4. 27.

Against a Bailly of a Bailly of goods, 12 Edw. 4. 13.

It lies against Baron and Feme, for not repairing Seabanks upon the Land of his Wife, 7 Hen. 4. 31. for the tort is done by the Husband as well as by the Wife. Baron and Feme.

Trover and Conversion lies against Baron and Feme for the Conversion of the Feme, for it is a disloyal act: which his Wife may do, Mich. 7 Jac. Ban. Regist. Drapers case; and so an Action upon the Case lies not.

Trover and Conversion lieth not against a Carrier for a delivery to his Servant, but an Action upon the Case, Pasch. 9 Jac. Ban. Reg. Wornball and Bradshaw. For the delivery to the Servant is a delivery to the Master, and for which he is answerable. X

Counſelor.

A Counſelor is retained to purchaſe Land, and diſcloſes the Secrets by which the party is damnified, &c. 11 *Hen. 6.* 18.

Assumpſit.

Upon an *assumpſit* to pay a debt, *No. Lib. Intra. 1. B. ſect. 1. Coke 9. part. 86. B. Pinchons caſe, 1. Coke 9. part. 94. A. Banes caſe; viz. upon the ſpecial agreement.*

Church-wardens.

Againſt Churchwardens for not repairing a Gutter of the Church, which is a Nuſance to my houſe. *Lib. Intra. 10 D. ſect. 1.* For they ought to repair the Church, and are publick Officers of whom the Law takes notice.

Joynder.

Divers do make an *assumpſit*, action lies not againſt two of them only but if the Plaintiff ſhews that the others are dead, then it is good, and it is ſufficient to ſhew, that at the requeſt of them that are alive and the others the thing was done, and that the others are now dead, *Trin. 7 Jac. Ban. Regis, Brereton and his Wife againſt King and Milner.*

Maſter.

Againſt a Maſter upon a ſale and warranty of the Servant, 11 *Edw. 4. 6.* for the act of the Servant being for the Maſters advantage is the act of the Maſter.

Tenant at will.

Againſt Tenant at will for voluntary waſte, *Littleton 15. A. 14 Hen. 8. 12. Brown, Coke 5. part. 13. Salops caſe, Dyer 121. pl. 17.*

But not for permiſſive or negligent waſte, *Coke 5. part. 13. B. Salops caſe;* for the Law makes a difference betwixt negligent, and wilful and malicious wrongs.

Tenant per Elegit.

Againſt Tenant *per Elegit*, which holds over, and cuts the Trees after money tendered to him, 21 *Edw. 3. 16.* to ſatiſſie the debt; for he is to hold the Land till his debt is ſatiſſied.

Againſt

Against a Tenant in common of a House by his Tenant in common for breaking his Gutter between their houses, 2 Hen. 5. plea 12. for trespass *vi & armis* he cannot have, because he is seised *per jug. & per tout.*

For making a Lime-pit to burn Lime, by which Kiln. his house is damnified, 13 Hen. 7. 26.

A having an ancient Light, B erects a house Tenant for which stops it, and leases it to C; yet an Action years. lies not against C, because the Lessee had done no wrong, and he could not pull it down, Trin. 13 Jacobi Ban. Regis, Bolds case. Q. as the Law is now taken, whether it lies against B.

When a man prescribes in an Ile in a Church, Vicar. and the Vicar will not suffer him to make a Sepulchre there, No. Lib. Intra. 8. B. sect. 7. for he disturbs his Inheritance.

Against a Sheriff upon a false return, Lib. Intra. Sheriff. 11. A. sect. 1.

Upon returning *nichil*, where the party had sufficient, Lib. Intra. 11. C. sect. 2. for this is a false return.

For what things this Action lies.

Against a Tenant by *elegit*, that holds the Trees. Lands after his money tendered him, and cuts the Trees, 21 Edw. 3. 16. *vid. supra.*

So if Tenant at will cuts the Trees, Littleton 15. A. Coke 8. part. 13. B. Salops case, 48 Edw. 3. 25. for that is voluntary waste, for which he is punishable.

If a Bailly cuts Trees without cause, 18 Edw. 4. 27.

For disturbing of men to come to my Chappel Chappel. with

with offerings, 19 *Rich.* 2. Action upon the Case, 52. This is now out of doors since the Reformation *temp* *Edw.* 6.

Way.

Against the Owner of the Land in which I

1. *Estreite.* have a Way, and he straitens it; for I am thereby abridged of my easement, 33 *Hen.* 6. 26.

2. *Trench.* For trenching of it, for the former reason, *Lib. Intra.* 6. 16. *C. Sect.* 1.

3. *Disturb.* For any manner of disturbance in my passage or part of my way, so that I cannot pass so commodiously as I did before, 14 *Hen.* 8. 3. 1. 21 *Hen.* 7. 35. 22 *Hen.* 6. 15. 10 *Hen.* 7. 21.

4. *Stop-
ping of it.*

If the whole way be stopped by one that is not owner of the Soil, it lies, 22 *Hen.* 5. 33 *Hen.* 6. 26. 10 *Hen.* 7. 21. For I am wholly deprived of my easement, and no other Action lies against him.

So if Tertenant and others stop it, 34 *Hen.* 6. 4. *tamen quere* as to the Tertenant.

For against Tertenant that stops all the way an assize of Nufance doth lie, and not this Action, 22 *Hen.* 6. 14. 3 *Elix. Dyer* 250. *pl.* 88. 19 *Hen.* 6. 29. *pl.* 49. *Palton.* 2 *Hen.* 4. 11. *pl.* 48. *No. Lib. Intra.* 12. 6. *Sect.* 10. Q. whether two Actions may not be brought in the former case.

But if I have it but for years an Action on the Case lies, 33 *Hen.* 6. 26. *Nat. br.* 176, & 184. *L. eodem.* For he can claim no inheritance in the Land where the way lies.

If *A* stops my way, and leases the Land to *B*, it lies against *B*, if he do not open it, for continuing of the wrong; but if *A* build a House and leases it to *B*, there *B* cannot pull it down for to lay open my way, for this is waste in *B.* *Trin.*

13 *Jac. Regis*, *Bolds case*, and *Rutlandshiers case*; and therefore an Action lies not against B for not pulling down the house, for that were unreasonable.

But by 11 *Hen. 4.* an Action upon the case lies for stopping of a way in gross only, and an assize of Nuisance for a way appendant. 21 *Edw. 3. 2. 6.* 34 *Hen. 6. 4. pl. 11.* Note the difference, one favours of the realty, the other is but personal.

But for stopping of a way in my own Land Trespass *vi & armis* lies, and not this Action, 31 *Edw. 3. Action upon the Case* 38. 13 *Hen. 7. 26.* For there is a plain breach of the Peace by disturbing my possession.

But for stopping of a Highway the Defendant shall be punished in the Lect, and not by this Action, unless the party had a special loss; for a special loss admits of a special remedy, 27 *Hen. 8. 26.* 5 *Edw. 4. 2. b.* 7 *Edw. 4. 8.* 33 *Hen. 6. 26.* *Coke* 5. part. 73. *A. Williams case.* 21 *Hen. 7. 35.* *Coke* 9. part. 113. *Mayrs case.* For a Court Lect is to redress such publick grievances.

If A says, that B hath right in my Land for Slander of years an Action lies, *Coke 1. part. 177.* *Mildmays* my Title. case. *No. Lib. Intr. 30. A. sect. 27.* but I ought to shew how I am prejudiced by his saying so, or else it lies not, for his lye were it a trespass only, the Law will not punish it.

A brought an Action upon the Case against B, because that B published and declared falsely, that he had the Lease of the Land of A, and that he intended to sell his Land, and was thereby hindred; B said, that he had an Indent. of Lease, as in the Count is mentioned, and traverseth that he forged it not,

Action upon the Case.

1. when B claims a right, though he had none; yet the Action lies not, for it appears not whether he had a right or not; 2. the Count is good, because it is, that it was against the knowledge of B that it was forged; 3. *Sciens* is not traversable, *Coke 4. part. 18. A. case 14.* See the Case at large.

Land, For stopping a Ditch by which my land is surrounded with water, *Nat. br. 88. E. 89. M. 39 Hen. 6. 32. 11 Hen. 4. 82. 14 Hen. 8. 31.* *Q.* whether it lies for suffering it to be stopped by negligence, *viz.* by another.

For not scouring a Ditch, by which my land is overflown, *Regist. orig. 100. A.* *Q.* if I be not thereby damaged.

For breaking of a Seabank, by which my land is surrounded, *Nat. br. 86. F. 89. B. & C. Reg. orig. 95. A.*

+ It lies not for erecting of Coney-burroughs, by which I lose part of the profits of my land, because the party that erected them had no property in the Conies, for they are *fera nature*, *Coke 5. part. 104. Boulstons case*; and it is lawful for me to kill them if they come upon my ground. *Q. tamen* in regard of the trouble.

Trade. If one hath a Bakehouse by Prescription, and I set up another by him to his prejudice; for the Law favours and protects ancient Rights, presuming they had lawful commencements.

X
Distress. 1. For disturbing my Bailly to distrain for an amercement, *18 Hen. 6. 9. pl. 20.* for the wrong is done to me; for the Bailly is my Servant, and acts for my benefit.

2. For disturbing me to distrain or to attach, *Nat. br. 102. F.* This is stronger than the former case, and the injury more apparent.

3. For

3. For distraining more Suitors to come to my Leet than ought to be, *Nat. br. 94. G. Coke 4. 94. B. Regist. orig. 103. B.* for the Law hates needless troubles and vexations.

4. For distraining Parsons or Vicars in their Spiritual possessions, *Nat. br. 94. E.* and the Writ is, *contra legem & consuetudinem regni nostri, & contra formam articulorum, & contra pacem nostram, ibidem.* For the Common Law protects the Clergy, and takes care for their estates to preserve them from violence.

1. Against him that sets up a new Fair or Fair and Market against my Fair or Market, *22 Hen. 6. 14. Market. 11 Hen. 4. 74.* for I am prejudiced thereby in my ancient right.

But *41 Edw. 3. 24. per Belknap, Quod permittat lies, and not this Action. Q. tamen car semble nemy.*

2. For disturbing Customers to come to the Market. *11 Hen. 4. 47. 41 Edw. 3. 24. 29 Edw. 3. 18. 9 Hen. 6. 45. Nat. br. 91. G. 2 Edw. 3. 32. pl. 9.* For it is as well a private injury to them, as it is a prejudice to the Commonwealth.

3. For disturbing me to hold a Fair or Market, *16 Edw. 2. Action sur case 47.* for it hinders my profit.

And the Writ was, that it held three days, and the Count two days and two half days, and good; for it is all one in substance.

4. For disturbing me to take Toll in a Fair or Market, *9 Hen. 6. 45. 21 Hen. 7. 16. quere,* for it seems Trespass lies.

5. For selling in another place out of the Fair, *Regist. orig. 107. A. & B.* for thereby the Fair and the profit is lessened.

D 4

1. When

Deeds.

1. When the Tenant for life or years burns the Deed to him delivered of remainder, 9 *Edw.* 4. 53. *viz.* by the remainder *in Ann.*

2. When a Deed is lost, 34 *Hen.* 6. 4. *viz.* by negligence; for the Law punisheth negligence whereby another is damnified.

3. When the Seal is broken off, 39 *Hen.* 6. 46. *Lib. Intra.* 7. B. *Señ.* 1. & 3. either wilfully or negligently.

4. For Deeds sold with the Land, and not delivered upon request, *Lib. Intra.* 5. A. *Señ.* 2. for the agreement is not performed, which the Law creat s.

5. For forging a Statute Staple or Merchant, *Nat. br.* 96. B. 17 *Edw.* 3. 49. *Regist. orig.* 115. A. & B. to recompence the party wronged, though the party may also be indicted for it.

6. For forging of a Release by which I lose my Ward, 39 *Edw.* 3. 13.

False Return.

1. For returning me summoned, and thereby Judgment is given by default against me, where I never was summoned; but this was after the death of the Summoners, 8 *Hen.* 6. 1. 6 *Edw.* 4. 3. 8. 26 *Affize* 48.

2. For returning a *Nichil* where I had lands, *Nat. br.* 93. b. 31 *Edw.* 3. *Proceß* 55. for I am thereby disparaged.

Ferry.

1. For setting up a new Ferry to the Nufance of my Ferry, 22 *Hen.* 6. 14. and so my damage.

2. For threatening me or Passengers, by which I lose the profits of my Ferry, 22 *Hen.* 6. 17. *pl.* 32.

Foldage.

For disturbing my Foldage, *No. Lib. Intra.* 14. B. *Señ.* 12. for by the Foldage my land is made better.

For

For disturbing one to have certain walks in the Forreſt. Forreſt of *Selwood*, *Coke 5. part. 76.* the Counteſs of *Pembrokes* caſe; for his profit is thereby hindred.

For erecting a Warren or Dove-houſe this Action lies not, although it be to the Nuſance of another, *Coke 5. part. 104. B. Boulſtons* caſe; for they are caſual and uncertain profits. Warren. *Crif.*

For executing Proceſs in my Liberty, *Nat. br. Liberty. 95. B. Regiſt. orig. 103, 104. 5 Edw. 3. 150. pl. 20.* for my priviledge is thereby abridged.

1. For hindring my light by making a Wood-Houſe. pile, *Coke 9. part. 57. B. Alreds* caſe, *le Count* there, and *58. No. Lib. Intra. 19. B. ſeſſ. 16. 7 Edw. 3. 261. pl. 15.* 2. if I make it upon my own ground, and for my own private uſe.

2. For infecting the Air of my Parlour with an Hogſ-skin, *Coke ibidem*; for thereby my health is endangered, which is more to be valued than wealth.

3. With a Dyehouſe, *Coke ibid.* for they uſe many offensive Drugs. *+*

Michaelis 9 Jac. Ban. Regis, Ward verſus Cheſhire. The Plaintiff counts that he is ſeized in fee of a Kitchin, in *parochia ſancti Dunſtani* in London, and preſcribes to have Windows into the Backſide of the Defendant, and for his ſtopping up of *maximam partem, &c. port.* To action, and upon Not guilty pleaded it was found *pro quer.* and moved in arreſt of Judgment.

1. He did not ſhew that the Kitchin was ancient; but it was reſolved, that it was implied in the Preſcription; but by *Williams* this was not material: but *Crook è contra*, by the cuſtome of the City it may be ſtopped, if not ancient. 2.

2. For

Action upon the Case.

2. For that the quantity was not shewed, but resolved it need not be, *Coke 4. part. 49. Com. 249.*

3. Neither shews he the Parish in which the Backside is, *sed non allocatur*; because the stopping of the light is the material point, and it was shewed where that was: and the Plaintiff had judgment. *Nota & que C. Ley a cest jour.*

Hill. 9. Jac. Ban. Regis, Hughes & Keme. A had an ancient house in London, B builds a new one which stops the light of A; *per Curiam*, 1. That a man cannot by the custome of London erect a new house, where there was not one before, to stop the Lights of the ancient house. 2. Upon an ancient Foundation a man may erect a new house, and stop the ancient Lights of his Neighbour; for by the same reason that his Neighbour erected his house more high, may the other at any time erect his, but he cannot enlarge his in breadth or length to stop the Lights of his Neighbour, *vide 22 H. 6.*

15. 2.

Mannor.

For removing a Plaint out of my Mannor without cause, 27 *Hen. 6. 4.* for thereby the profits of my Court are lessened.

For taking an estray within my Mannor or Liberty, 13 *Edw. 3. breve 674.* 31 *Edw. 3. breve 333.* but *ibidem*, it lies not before seisure of the stray, for before the Lord was not intituled unto it.

Meer-
stone.

For removing a Meerstone, though one of them be Tenant in Common, 1 *Hen. 5. 1. Lib. Intra. 9. C. sect. 1.* for thereby part of the Land may be endangered to be lost, and Suits may thereby arise touching the extent of the Lands.

Mill.

1. For disturbing my Customers to come to my Mill, 11 *Hen. 4. 47.* 41 *Edw. 3. 24.* 29 *Edw. 3.*
18.

18. 9 *Hen. 6. 45.* for thereby my Toll is lessened.

2. For erecting a new Mill, *Lib. Intra. 9. B. Secd. 2, D. secd. 1.* Q. if it be not to the hindrance of an ancient Mill.

1. For disturbing to take seisure of an Office, Office. 6 *Edw. 3. 9.* for till seisure he cannot receive the profits thereof.

2. For disturbing the Steward to hold Court, *Lib. Intra. 5. B. Secd. 1.* Q. whether it may be brought by the Lord and the Steward also? It seems it may, for both may be damnified.

3. For disturbing to take the profits which belong to the office, 9 *Rich. 2. Action sur case, 5.* for there is apparent damage.

4. Against an Escheator that returns contrary to that which was found by office, 9 *Hen. 6. 60.* for by the false return the party concerned may be damnified.

5. If he make a return where no office was found, 21 *Edw. 4. 23, & 27.* for he is not a Judge, but Officer, 9 *Hen. 6. 60. viz.* to return the Enquest found by the Jury, and not to judge of himself how the Lands were held.

6. For procuring a false Office to be found by which my Land is seised, 47 *Edw. 3. 15. Kitchin 175. A.* for my Inheritance is thereby made worse by reason of the tenure. This is now otherwise.

For erecting of a Dyhouse which poysons my piscary. water, by reason whereof my Fish dies, *Coke 9. part. 59. A. Aldreds case;* and so is it for infecting the Air thereby. *vid. antea.*

1. For releasing to me with warranty, and procuring another to sue me, 34 *Edw. 3. 20.* for this ment. is fraudulent dealing.

1. Against

Prote-
ction.

1. Against Tenant in a Precipe, which hath protection allowed to *Westm.* for one year, and within the year he stays at *Gloucester*, 15 *Edw.* 4.
2.

School.

If I sue a Schoolmaster for erecting a School in the same Town the Action lies not; for it is no Nuisance, 11 *Hen.* 4. 47. pl. 21. 22 *Hen.* 6. 14, *prifott.* and it is for the good of the weal publick, which is to be preferred before any ones private profit.

Slander of
my Title.

If *A* says that *B* hath right in my Land for years an Action lies, *Coke* 1. part. 177. *Mildmays* case, *No. Lib. Intra.* 30. *A. Sect.* 27. but I ought to shew how I am prejudiced particularly, else there appears no cause of Action.

A brought an Action upon the case against *B*, because that he published, that he had the lease of the Land of *A*, and that he intended to sell it and was hindred; *B* said, that he had an Indenture as in the Count is mentioned, and traverseth that he forged it, 1. when *B* claims a right, though he had none, yet the Action lies not, for it may be he thought he had a right, and so there cannot be said any malice. 2. The Count is good, because it is that it was against the knowledge of *B* that it was forged. 3. *Sciens* is not traversable, *Coke* 4. part. 18. *A.* case 14.

Land.

1. For stopping a Ditch, by which my Land is surrounded, *Nat. br.* 88. E. 89. M. 39 *Hen.* 6. 32, 11 *Hen.* 4. 82. 14 *Hen.* 8. 31. for the Land is thereby made worse, else it will not lie.

For not scouring a Ditch, by which my Land is overflown, *Regist. orig.* 100. *A.* Non-feasance is punishable as well as a Misfeasance.

For

Action upon the Case.

61

For breaking of a Seabank, by which my land is surrounded, *Nat. br.* 86. F, 89. B, & C. *Regist. orig.* 95. A. *vid. antea.*

It lies not for erecting of Coney-burroughs, by which I lose the profits of my Land, because the party had no property in them, *Coke* 5. *part.* 104. *Boulstons* case; and I may take them upon my land and justify it. *vid. antea.*

1. If one hath the trade of a Bakchouse by Trade. prescription for the whole Town, and another erects another and sells, an Action lies, *Coke* 8. *part.* 125. case of London, 19 *Rich.* 2. *Action sur Case* 52. The Law favours Ancient rights, for it tends much to peace.

2. For using the trade of a Dyer in R without License of the Archbishop of York, *Regist. orig.* 105. & 106. *Coke ibidem*; for the privilege of the Bishop is thereby impaired. ✕

3. The King grants to A the sole faisanee of play-cards, yet A shall not have an Action upon the case against others that use the trade, because the grant is void, *Coke* 11. *part.* 86. A. *Monopolies*; for it is a Monopoly which is against the publick good, and the liberty of the Subject.

Tenant at will makes voluntary waste, an Action Waste. of waste lies against him, *Littleton* 15. A. 14 *Hen.* 8. 12. *Brown.* *Coke* 15 *part.* B. *Salops* case. 48 *Edw.* 3. 25. *Dyer* 121. *pl.* 17. 11 *Hen.* 6. 38. and not an Action on the Case.

For diverting of part of the stream by the owner of the Land, by which the stream flows over, 12 *Hen.* 4. 47. 21 *Hen.* 7. 30. *Dyer* 248. *pl.* 80. *Coke* 4. *part.* 86. *Luttrells* case the Count there, 3 *Eliz.* *Dyer* 195. *pl.* 37. ✕

But

Water-course.

But for diverting *majoris partis* Affize lies, 8 *Elizabeth. Dyer* 248. *pl. 80.* but this is intended when the Mill cannot go, for that is prejudicial to the Freehold.

Watering-
places.

For stopping a Pit that one hath for water, although it is not a common watering-place, 21 *Hen. 7. 35. No. Lib. Intra. 18. D. sect. 15.* for thereby I that digged it lost my labour and easement.

The Writ.

Ought to be certain as the Count, except in the place and time, 22 *Hen. 7. 91.* which in this action are not traversable.

It ought to have the same certainty as the Count, and to have the effect of all the Count except the year and day, the quantity and certainty of the Land, 38 *Hen. 6. 9. pl. 20. Prison;* for the Land comes not in question. 2

The Writ shall not be *vi & armis*, *Nat. br. 92. E.* for it supposeth not the breach of the publick Peace, but only a particular damage.

When there are two causes of Actions, 1. *causa causans*, 2. *causa causata*, the former may be alleged *vi & armis*, *Coke 9. part. 50. B. Salops case*: For that is but as an inducement to the cause of action, upon which the Action is brought.

The Process, 1. before appearance; 2. after.

At Common Law a *Capias* lieth not, 43 *Edw. 3. 11. Coke 10. part. 72. A. Marshalsey*; for liberty was preferred before private wrongs, which concerned the estate only.

But

But 10 Hen.7. cap. 9. such proceſs is given in an *Action ſur le Caſe* in *Ban. Regis & Com.Ban.* as for Treſpaſs or debt, *Br.exigend.* 29. *vid.* the Statute.

The Judgment.

For not repairing of a Bridge *per quod*, &c. the judgment ſhall be to recover dammages to the party damnified, and a Diſtreſs to the Sheriff to compel the Defendant to repair to prevent further damage to any.

For what things it lies.

1. For chaſing Sheep into the water, 2 Hen.7. *Chaiſing*
11.B. Q. if the Sheep be not hurt by it, if it do Sheep.
not lie? It ſeems not.

2. For taking of Sheep delivered to me for a year to dung my Land, *Nat.* 26.B. & D. Q. for I thereby am damnified.

1. Againſt him that I give money to give to my Attorney, and he gives it to my adverſary, 20 Hen.7.9. for here is breach of truſt by which I am damnified.

2. If I lend my Plate or other goods to one, For goods
and he waſtes them, or miſuſeth them, or con- lent, and
verts them to his own uſe, 27 Hen.8.25.28 Hen.8. are waſted.
Dyer 22.pl.137.20 Hen.7.4. 2 Hen.7.11.2 *Edw.*
4.5. 18 *Edw.* 4.23. 21 *Edw.* 4.19. *Crook*, 2 Hen.
8.160.pl.2. For here the Law creates a truſt and
Covenant, which is broken.

3. If againſt a Bailly that cuts my Trees, or kills my Cows, 18 *Edw.* 4.23. Q.

4. If a Bailly lend them to B. and he waſtes them, it lies againſt B. 12 *Edw.* 4.13. for the Bailly might lend them:

5. Againſt

5. Against my Butler that breaks my Hana-
per, 18 *Edw.* 4. 27. Now it is Felony by the Sta-
tute, 2.

6. Upon bailment of a Bag, in which was 20 *l.*
and he breaks the Seal, 21 *Edw.* 4. 30 *pl.* 25.

7. So for an obligation, 39 *Hen.* 6. 46. for I
may be damnified thereby.

8. Against a Bailly of Beasts, which kills them,
Littleton 15. *A.* *Dyer* 121. *pl.* 17. 14 *Hen.* 8. 12.
for he hath no such Authority *quatenus* a Bailly.

Goods not
delivered.

The Executor comes to the Heir 31 days after
the death of the Testator, and demands the
goods that are in the house, and he refuses to de-
liver them; 1. this is a convenient time, 2. this
wrong is punishable. *Mich.* 7. *Jac. Ban. Regis,*
Steedmans case; for thereby the execution of the
will is retarded.

Wood and
Estovers.

1. *A* sold 20 cords of Wood to *B* to have by
assignment, and afterward sold 4000 to *C* to have
at his election, and assigns to *B*, which he shall
cut, and *C* takes them, *B* shall have an Action a-
gainst *C*, for the first bargain was made with him,
Coke 5. *part* 24. *Palmer's* case.

2. Tenant for years shall have Estovers in the
Wood of *B* which shall be cut, or have an Acti-
on, *Coke* 9. *part.* 112. *B. Mayers* case; if he be hin-
dred.

Carrier.

1. Against a Carrier that breaks Pots and Glas-
ses, 2 *Hen.* 7. 2. for this is a misfeasance in the
Carriage, which the Law implies ought to be
safely.

2. If the things be delivered to the Servant of
the Carrier, yet an Action lies against the Master,
Pasch. 9 *Jac. Ban. Regis,* *Wornball & Bradshaw*;
For

For the Master must answer for the misfeasance of his Servant.

1. For delivering a Horse to B for safeguard, ^{A Horse.} who delivers him to C, to the use of A, who spoils him, A shall have an Action against C. 12 *Edw.4.13. pl.9. Q.* for the Horse was delivered for the benefit of A.

2. Against a Smith that pricks my Horse, *Nat. br.94.D. vide the Writ there, 17 Edw.4.43. 11 Edw.4.6. 46 Edw.3.19. 3 Hen.6.36. 14 Hen.6. 18. Regist. orig.106.A. 48 Edw.3.6. pl.11.* For misfeasance, for the Law implies he ought to be skilful and careful. X

And if the Smith lends the Horse to another, who pricks him, Action lies against the second, 12 *Edw.4.13. Q.* if it lies not also against the Smith.

A Servant brought a Horse to the Smith, who pricked him, by which the service of the Master is neglected; the Master shall have an Action, *Hill. Jac. Ban. Regis*, for the damage comes only to the Master.

For taking my Pigeons with engines, 16 *Edw. Pigeons. 4.7. or shooting of them. Q.*

For playing with false Dice, *Nat. br.95.D. Re. Dice and Cards. gift.orig.240. No.Lib. Intr. 8. sed.8. or for cheating with true.* X

The same law of false Cards, *Coke 11. part.87. B. Monopolies*; for the Law punishes fraud in all things.

1. For distraining of a Horse of a Prelate, ^{Distress.} when he had other things distrainable, *Nat. br.93. I. Regist. orig. 100. B. Coke 4. part. 95. A. Slades case*; in respect of usefulness of him above
E other

other goods, and his damage for want of him.
Q. tamen.

2. For distraining in a High-way, or in any Spiritual Land belonging to a Church, against the Articles of the Clerks, 94 *E.Regist.* 100.B.

3. For distraining one to come to my Leet, when he owed no suit to my Leet, *Nat.br.* 94. G. for the distraining was unlawful.

For distraining Cows, and then impounding them till they cast their Calves, *Nat.br.* 86.E. *Q.* if the distress was not abused, if it lie.

For distraining Cattel of the plough, or Lambs, where there was other sufficient distress, *Lib.Intra.* 226.D. *Distress*, the Writ there, *Nat.br.* 90.B. for a mans livelyhood is favoured in Law, and also tillage. *Q.* if the Lambs be weaned.

The Count shall not shew that there was other sufficient distress, but it shall be *contra formam Statuti*, which provides against such distraining, 14 *Eliz.Dyer* 312.pl.86.

And it lies when the Tenant hath made agreement for the Rent, and yet is distrained, 18 *Edw.* 2. *quare.*

For distraining in a Liberty where the Contract was not made, *Regist.orig. A. per le Stat. Westm.1. cap. 34.* which directs where Distresses ought to be taken.

Escape
from a
Goaler.

By a Goaler against a Prisoner that escapes being committed *per Auditors*, *Nat. br.* 95.C. 130.B. the Writ there; for the Goaler is liable, and therefore it is reason he should have remedy against the party.

Deeds.

For tearing an Obligation delivered to be kept, 30 *Hen.6.44.Lib.Intra.7.B. seci. 1.* for this is breach of trust.
 The

The Defendant pleads, it was delivered in the nature of an Acquittance *absque hoc*, that it was, &c. *Lib. Intra. 7. B. secti. 2.*

Against a Ferry-man that surcharges his Boat, Ferryman. by which my Horse is drowned, 22 *Affize* 41. for ~~X~~
I am damnlified by his misfeasance.

1. For forging of an Obligation that is put in Forgery
suit against me, 5 *Edm. 4.* 126. *pl. 44. Coke 4. part.* &
18. *B. case* 14. 42 *Affize* 8. for the private dam- Counter-
mage done me thereby. feiting.

2. For forging of a Resignation, *Regist. orig.*
114. *B.*

3. For forging of a Will, 5 *Edm. 4.* 120. *B.*

4. For counterfeiting a Letter in the name of
his Master, that the Plaintiff would send his Ma-
ster 20 *l.* upon which the Plaintiff delivered 20 *l.*
to the Defendant, 33 *Hen. 8. cap. 1. Pasch. 7 Jac.*
Ban. Regis, Tracy versus Veale alias Smith. In all
these cases an Indictment doth also lie, because it
is *contra pacem*.

For taking away a ward, he shall have a value *Guard.*
of the marriage, 29 *Affize* 35. and not this Acti-
on, by a Writ *de valore maritagii*.

For putting something in my Ditch, whereby Grain
my grain is drowned, *Regist. orig.* 95. *B. 97. A.* and drowned.
thereby made worse; else *Q.* whether it lie or no.

For menacing to take my goods, if I do not Menace.
give him 20 *l.* 7 *Edm. 42. Q.*

For taking away my Pales, *quere* whether Pales.
Trespas vi & armis doth not lie, 15 *Edm. 4. 4.*
Choke.

For putting in a common River piles, by which piles.
my Oxen perish, *Nat. br. 92. F.* otherwise it seems
it lies not.

Protecti-
on.

For taking my goods after protection to me granted, *Regist. orig. 12. A.* 2. for I may plead my Protection upon a Replevin.

Rescous.

By a Sheriff against one that rescued one in Execution, *Dyer 241. pl. 47.* for the Sheriff is thereby in hazard to pay the debt.

Servants.

1. For taking my Servant out of my service, *19 Rich. 2. Action upon the Case 52.* for it is to my prejudice in the intendment of the Law.

Bar.

Not his Servant is a good plea in bar, *20 Hen. 7. 4. pl. 13. Fineux*; of the Action for the Defendant to plead, viz. *tempore Captionis.*

Servant.

2. For enticing my Servant to depart, and him to retain, *11 Hen. 4. 23.* for this is fraudulent and unconscionable.

3. For beating my Servant, though he serve me but for pleasure, *21 Hen. 6. 9.* for I receive profit by his service, and do lose it by beating of him.

But he ought to count *per quod* he lost his Service, *Coke 9 part. 113. A. Mayers case, 18 Edw. 4. 27. pl. 24. 2 Hen. 4. 12. pl. 49. 28 Hen. 6. 14.* and there was omitted this word *per* and yet good, for the sense was good without it.

And if the Plaintiff have a Verdict and doth not count as aforesaid, he shall never have judgment, *Crooke 21 Hen. 7. 71. pl. 15.* because it doth not appear he had cause to bring his Action.

But he need not count of the retainer, *21 Hen. 6. 31. pl. 18. 22 Hen. 6. 30. B. & 43. B. 31 Hen. 6. 12. pl. 2.* for if he was not his Servant the Defendant may traverse it.

4. For menacing my Servant, *per quod, &c. Regist. orig. 94. B.* for the loss of the service is the main cause of the Action.

5. For

5. For assault and battery of my Servant, *per quod, &c. Regist. orig. 102. A. Nat. br. 91. vide the count Lib. Intra. 613. B. sect. 19 674. C. sect. 1.*

6. For assault and battery, and imprisonment, till the Plaintiff made fine, *per quod damnificatus, &c. 19 Hen. 6. 35. pl. 37.*

7. For battery, mayheme and imprisonment, *per quod damnificatus, &c. Crooke 7 Hen. 8. 180. pl. 4.*

8. When his Dog bites my Servant, *per quod, &c. Regist. 111. A. servitium amisi*; but then he must count that kept him, knowing him to be accustomed to bite.

A good plea to the Writ, that it was his Wife that was bitten, *7 Rich. 2. traverse 206.* for then his Count is false.

So, that it was his Farmor, *13 Rich. 2. traverse 210.*

So, that it was his Prentice; *2* for a Prentice is a Servant, *2 Hen. 6. 31. pl. 18.*

So, that it was his Companion, *37 Hen. 6. 7. pl. 13.*

Against the Lessor that outs the Executors of Term. the Term left to the Testator, *Nat. br. 92. G. 2* whether an ejectment doth not lie.

And the Writ is there by Summons not *per pone per vadios, &c.* Summons is the ancients Process.

For doing of wrong to the damage of another touching his body.

For lying in wait to kill me or take me as his Villain, so that I dare not go about my business, *wait.*
2 Edw. 4. 5. 17 Edw. 4. 4. Regist. orig. 101, 102.

Crooke 13 Hen.7.26,27. 2 Hen.7.12. pl.15. Coke 4. part.18. A. case 14. for the Law highly prizeth life and liberty.

Note, *Alio quod metus causa fuit, datur ei qui probabili metu rem suam tradidit, vendidit vel promisit, versus eum qui metum intulit, & dicitur metus probabilis qui in virum constantem cadere possit, & non in hominem meticulosum*, Bracton, lib. 3. cap.4. fol.103.B. It must be sure grounded on a reasonable cause of fear.

Arrest.

1. For arresting me in the name of B, without his consent, 7 Hen.6.43. pl. 19. for it may be he would not have arrested me, though he had cause.

2. For arresting me without cause, 8 Edw. 4. 13.

But this ought to be by collusion to vex me, 43 Edw. 3. 20. for if there be *probabilis causa* it lies not, for one may be deceived in the Law.

3. For arresting me to appear in the Marshalsey, where I was not sued, 3 Hen.6. estoppel 18. 10 Hen. 6. 13. 7 Hen. 6. 30. for this is vexatious.

4. For arresting me in London, knowing I was privileged in Bank, 7 Hen. 6. 45. for I am debarr'd of my privilege, and put to more trouble.

5. Against a Sheriff for returning me *nihil* where I had lands, by which I was taken *per Capias*, Nat.br.93.b. 31 Edw.3. Process 55. for his false return to my prejudice.

For arresting me and bringing me before a Justice, where I was indicted and acquitted, and this is good cause of Action although the time of the arrest is not shewed, because of the vexation, Trin. 7 Jac. Ban. Regis, Olivers case, which is the cause

cause of the Action, and the time is not material.

If one exhibit Articles to a Justice of Peace against B, to have him bound to his good Behaviour, no Action lies for this, because it is in course of Justice, *Coke 4. part. 14. B.* But *quare* if the Articles be false. Articles.

For putting Irons and putting in the Stocks, and giving little sustenance to one committed for Debt, or Arrearages in Account, *Nat. br. 83 H.* for the Law warrants it not, and the Law hates cruelty. Goalers.

For procuring another to be indicted without cause, *Nat. br. 114. D. 116. A. viz. probable* Indictment.

For procuring B to be indicted for a common Bawd, and he is acquitted *secundum Leges Anglie*, 1. good, although that the Count was not, that he was lawfully acquitted, for it is so implied; 2. he ought to have Counted *quod inde acquietatus fuit*, or words that do amount to so much, *Mich. 7 Jac. Ban. Regis, Rott. 407. Bell versus Gamble*; for else there appears no cause of Action.

For threatening by word or writing to beat me, if I come out of my house, *17 Edw. 3. 4. vide Bracton, lib. 3. cap. 4. fol. 113. B.* for I am thereby hindered in my occasions, and so damnified. Menace.

For threatening another of life and member, *10 Edw. 4. 6. the Writ and Count, Lib. Intra. 661. B. sect. 1, 2.* for he thereby goes in fear, and so the Peace is disturbed.

For putting poyson in my meat, *Regist. orig. Poyson. 102. A.* wittingly, to the hazard of my life or health.

Against a Chirurgion that impairs the body by his Medicine, 21 Hen. 6. 55. 11 Rich. 2. *Action upon the case* 37. For it is either a misfeasance of ignorance or of malice, both which are punishable on those that undertake a trust and skill.

For doing a thing to the damage of another touching his Name, which is Slander; for it turns to his prejudice.

Slander.

Dicitur quod scandalosum est generale verbum, and signifies that which one does to the overthrow of anothers credit and repute; therefore it is conceived, that if the words are spoken to the wrong of another, an Action lies, *Kitchin* 173. for the intended injury.

Fit autem injuria non solum cum quis pugno percussus fuit, verberatus, vulneratus, vel fustibus cesus, verum cum ei convitium dictum fuit, vel de eo factum crimen famosum, & hujusmodi. *Bracton*, lib. 3. fol. 155. A.

There are two kinds of defamations, Spiritual and Temporal, *Nas. br.* 55.

Note, when words are not spoken adjectively, if they touch one in his Profession or Trade they are actionable, otherwise not, *Coke* 4. part. 19. *case* 15. Q. Adjective words are incertain, and signifie nothing positively or directly affirmative.

Also if they imply or presume an illoyal act, viz. against the publick Peace, then an Action lies although they are spoken adjectively; but if they imply an intention only, then an Action lies not, *Coke* 4. part. 19. B. *case* 15. for the Law punisheth not Intentions, except it be in cases of Treason.

It

It lies not for calling one Adulterer, because it belongs to the Spiritual Court, 27 Hen. 8. 17. *Coke* 4. part. 17. case 11. but now it doth, because Adultery is made death by a late Statute. +

1. For calling a man Bankrupt it lies not, unless a man be a Merchant, or use a Trade, or get his living by buying and selling, *Pasch.* 40 *Eliz.* *Bec-kard & Constable*; it was there doubted, then one Case was cited in *Ban. Regis*, that it did not lie.

2. For saying that B will be a Bankrupt within two days, it lies, 6 *Edw.* 6. *Dyer* 72. pl. 6. *Coke* 4. part. fol. 19. for he is impaired in his credit, for none will trust one that is likely to break.

3. A shews that he was a Shoemaker, and did use to buy and sell per 10 years; the Defendant said that he was a Bankrupt, and this was good although he did not shew that he was a Shoemaker for 10 years, for it is implied in that he said, he used to buy and sell per 10 years, *Mich.* 9 *Jac.* *Ban. Regis*, *Dayet*, Chandler.

4. For calling a Merchant Bankrupt-Knave it lies, because it toucheth him in his Profession, *Coke* 4. part. 19. A, & B. in both the words.

1. For calling one Bastard, if he be an Heir, *Bastard. No. Lib. Intr.* 28. sect. 25. *Trin.* 25 *Eliz.* *Ban. Regis*. 2. if he be not an Heir, and no special damage laid. +

2. A intends to present B to a Church, and C says that he is a Bastard, by which he is not presented, B shall have an Action, *Coke* 4. part. 17. case 11. for here is a particular damage laid.

For calling one Bawd it lies not, 27 Hen. 8. *Bawd: Kitchen* 173. because it belongs to the Spiritual Court. — if it be spoken in London it lies; and +

And me seems the same Law, if it be in the Country.

Bribery.

A said to *B* your Attorney is a bribing Knave, Action lies because it toucheth him in his Profession, *Mich. 11 Jac. Com. Ban. Tardly & Ellil. 2.* For a bribing Knave is one properly that gives bribes, and not a taker of bribes; but that is not fair practise.

A said of an Attorney, you are well known to be a corrupt man, and to deal corruptly, Action lies, *Coke 4. part. 16. case 6.* for he is scandalized in his profession.

Bareſtor.

For calling a man Common Miſſeaſor or Bareſtor, it lies not, *Kitchin 173. A. vide 22 Affiz. 43. 2. tamen* of the word Bareſtor.

Couſener.

1. For calling a man Couſener it lies not, *Coke 4. part. 15. B. 2.*

2. Thou art a Couſening Knave, and haſt couſened my two kiſmen of Land worth 6000 *l.* and I will bring thee to ſtand upon the Pillory for it, the Action lies not, *Kitchin 173. B. 2. tamen*, for for calling one Cheater lately adjudged actionable in *B. S.* in *Parkburſt* and *Bramptons* caſe, by *Glan. Chief Juſtice.*

3. *A* is a Couſening Knave, and I have proved him a Couſening Knave for ſelling me a Saphir for a Diamond, it lies not, *Kitchin 174. A. 2.* if the words were ſpoken of a Goldſmith or Jeweller.

4. If Sir *John S.* might have his will, he would kill all true Subjects and the King, and he is a maintainer of Papiſts and Rebellious perſons; upon Not guilty the Jury found that he ſaid, I think in my Conſcience *ut ſupra, &c.* 1. the words are actionable, for *ſcandalum dicitur quod parit rui-*

natio

nam vel occasionem ruinae, 2. the Jury found the substance and no variance, *Mich. 14 Jac. Regis, Sydenham & May*; one must not tell his thoughts to prejudice another.

Thou art an Enemy to the State of this Realm, an Action lies, *Hill. 40 Eliz. Com. Ban. Hooknell & Smith. Q. tamen*, for the words seem very dubious.

It lies for writing a Libel in a paper, and affixing it to the Church-door, by which I am to enter, 17 *Edw. 4. 3. Lib. Intr. 13 B. sect. 4.* for it is in effect speaking of Scandalous words. Slander in writing.

For calling one false Justice of Peace, it lies, 4 *Edw. 6. 22.* if spoken in relation to his Office. False Justice.

It lies not for calling a man false Knave, *Kitchin 173, B.* for the word Knave is a general word, and a word of heat. False Knave. *X. Cr. L.*

1. It lies not for suing a man for Forgery, 11 *Eliz. Dyer 245.* False suit.

Because for false Action *sequitur nulla pena*, 2 *Rich. 3. 9.* for if the Action be false the Defendant shall have his damages *pro falso clamore*.

For this is in course of Justice, *Coke 4. part. 14. B.* And if it would lie, men would be terrified from punishing Vice.

2. But if one be sued in the Star-chamber for a thing not examinable, there an Action lies, *Coke 4. part. 14. B. case 3. No. Lib. Intr. 23. B. sect. 21.* For Actions are to be brought in the Courts proper to try them, and not in Arbitrary Courts. *Ergo Q.* whether an Action upon the Case doth not lie for suing in Chancery, where a plain Action lies at the Common Law.

3. But

3. But if one bring an Appeal in *Com. Ban.* it lies not, because this is in the nature of a Legal suit, though brought in a wrong Court.

Felon.

1

Forger.

Heretick.

1. For calling a Judge a Felon, 30 *Affize* 19. *Kitchin* 173. *A.* for Felony is Capital.

It lies for saying that one had forged a Deed, 11 *Eliz. Dyer* 285. for Forgery is indictable.

1. For calling one Heretick it lies not, because it properly belongs to the Spiritual Court, 27 *Hen.* 4. 17. *Regist. orig.* 54. *Coke* 5. part. 57. *B. Specotts* case. And the Common Law Courts ought not to entrench upon the Spiritual Courts; *nec e contra.*

2. But if one said of a Divine that he is a Heretick, by which he loseth his Benefice or Presentation, Action lies, *Coke* 4. part. 17. case 11. for there is a temporal loss.

Thief.

1. For calling one Thief an Action lies, 27 *Hen.* 8. 14 *Eliz. Dyer* 236. pl. 26. *Lib. Intr.* 12. *D. Sect.* 2. *Hill.* 4 *Eliz. Com. Ban. Reques* case, *Dyer* 9. pl. 112.

Common voice and fame is not sufficient to call a man Thief, 26 *Hen.* 8. 9. *Dyer* 236. pl. 26. for it may be false.

But he may justify that the Plaintiff stole sheep, *Mich.* 13 *Jac. Com. Ban. Cuddinston & Wilkins*, or any other thing; the stealing whereof is Felony, or petty Larceny.

For calling one Thief, and causing him to be indicted where he was acquitted, 27 *Hen.* 8. 11. *Lib. Intr.* 12. *D. Sect.* 2. 2. if the matter was suspicious.

For saying that *A* had stole sheep, 27 *Hen.* 8. 22.

For

Action upon the Case.

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For saying that *A* stole Sheep of *B*, 26 *Hen.* 8. 9. *pl.* 11.

A is a false Knave, and was at my house on the Sessions day at night, and would have robbed me, and did break my doors, and did put me in jeopardy of my life, 28 *Hen.* 8. *Dyer pl.* 171. for the words are very scandalous, though they seem very general.

A is infected with such a Robbery that he doth smell of it, 14 *Eliz.* *Dyer* 317. *pl.* 8. 6 *Edw.* 6. *Dyer* 72. *pl.* 6. for it implies that he was accessory to it.

There is a nest of Thieves at *B*, and *C* is the maintainer of them, and is a strong Thief, *Dyer* 75. *pl.* 2. *Q.* if the first words alone are actionable.

Men cannot have their Cattel go up and down the Common, but *B* and his Children will kill them with *Barbers* Dog, no Action lies, *Dyer* 118. *pl.* 79. for the words are not scandalous, and they are general and incertain.

Thou art a Steal-gown, and the first Gown that thou diddest wear thou stollest, and then diddest walk up and down in thy stolen Gown, and haddest no Gown until thou diddest steal one, Action lies, *No. Lib. Intr.* 22. *D. sect.* 20. because there is a particular act of Theft set forth.

Thou art a Thief, for thou stollest my Sons goods, Action lies without averring that he had goods, *Pasch.* 38 *Eliz. Com. Ban. Elin. & Moore*; for it shall be intended he had goods without an averment.

My Master *B* hath robbed me of all my goods, Action lies without averring that he was his Servant,

want, for this is Assets certain, *Mich. 15 Jac. Ban. Regis, Brown & Low*; for Master and Servant are *relata, posito uno ponitur alterum*.

B burned my Barn, (*innuendo*) a Barn of Corn, Action lies not; for it is not shewed a Barn with Corn, nor that it was parcel of the Mansion-house, and the *innuendo* cannot aid it, *Coke 4. part. 20. case 16. No. Lib. Intra. 24. D. sect. 22.* for a Barn may be without Corn, and not be parcel of a Mansion-house.

A hath stolen my Wood, Action lies, for wood cannot be intended Trees growing, *Pasch. 38 Eliz. Com. Ban. Arbor dum crescit, lignum dum crescere nescit.*

A doth or will prepare to Rob me, Action lies, for this tends to the ruine of A, *Mich. 14 Jac. Reg. Sydenham & May. Q. tamen*, for the words are very incertain.

A calls B Thief, and justifies that he stole sheep; B pleads the General pardon after the words spoken, the Action lies, for by the Pardon the word Thief is taken away, *Mich. 13 Jac. Com. Ban. Cuddingtons case, and Wilkens. Q.* for it seems hard Law, there being good cause to justify at the time of the words spoken.

Thou didst sett on me on the High-way, and didst take away from me my Purse, and I will be sworn to it, Action lies, *Pasch. 9 Jac. Ban. Regis, Stoner & Holland*; for it implies Felony, *quare tamen*.

Lepros.

1. For calling one Leper or Leprous Knave, Action lies, *Intr. Taylor & Baggs*; for thereby men will avoid his company, *& homo est animal sociabile*.

For

Action upon the Case.

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For Leprosus extra communionem positus petere non potest, Bracton, lib. 2. fol. 12. A.

1. For calling one Murtherer, Action lies, 6 E- Murtherer. liz. Dyer 236. pl. 26. Q.

2. Thou hast killed my Wife, no Action lies, because it appears to the Court that she is alive, Coke 4. part. 16. A. and so no damage can be by speaking of the words.

3. Thou didst poyson thy Husband, Action lies; and yet it was objected, 1. that she ought to shew that he was dead, 2. that he died within the year, 3. that it was voluntary, Mich. 15 Jac. Ban. Regis, Gardiners case. Q.

4. Thou didst poyson S, and it shall cost me a 100 l. but I will hang thee for it, Action lies, No. Lib. Intr. 25. C. sect. 23. The latter words enforce the former.

5. A said, that C gave counsel to B to kill me, it lies not, because a man is not punishable without an action done in pursuance of the Counsel given, Coke 4. part. 16. case 10.

1. For calling one perjured, 2 Hen. 8. 22. Kitch- Perjured. in 173. yet an Indictment lies for Perjury.

2. But for saying that he had Forsworn himself, it lies not; for it might be against his will, or not in a Court of Record, Coke 4. part. 15. A, & B.

Unless he had said in such a Court of Record, Coke 4. part. 15. B. and then it implies he is perjured, and the words amount to as much.

3. A hath gotten a Mannor by Swearing and Forswearing, Action lies not, because the words are too general, and fix no offence upon the party, Coke 4. part. 15. A, & B. No. Lib. Intr. 21. B. Sect. 18.

4. W

t. Cr. 1.

Cr. 1.

4. *W* is forsworn and perjured in Swearing at the Common Pleas bar, upon the Deed which he then had in his hand; this shall not be intended that he swore upon the Deed, but upon the Book, *ergo* the Action lies, *Hill. 35 Eliz. Ban. Regis. Rot. 56. Crome*; for words must have a reasonable construction, according to occasion of the speaking of them.

H is a perjured old Knave in the Court of *T*, Action lies, for perjury in a Court Baron is punishable *per* the Statute of 5 *Eliz.* for the right comes in debate there, & *perjurium est jus alienum pervertere*, *Pasch. 40 Eliz. Com. Ban. Hatchman & Southcotte*. But before the Statute *quare* whether the words were Actionable or not.

A says to *B*, thou hast an old Creeple whore to thy Mother, for which words he sued him in the Spiritual Court, and produced *B* for a Witness; *A* takes exception to him because he was perjured at the Assizes of *D* in such a cause; *W* for this brought his Action against *A*, which justifies as aforesaid, 1. this was a legal course, *viz.* to take exception to a Witness; *ergo* the Action lies not; 2. the Ecclesiastical Court may punish perjury, therefore it lies not here, *Trin. 15 Jac. Ban. Regis, Westover versus Dabener*.

Thou art perjured, and I will prove it, Action lies, *No. Lib. Intr. 26. A. Sect. 24.*

For saying that *A* was detected of perjury in the Star-chamber, it lies not, because an honest man may be detected, but not convicted, *Coke 4. part. 16. case 8.* Note the difference:

Plague.

1. For saying of an Innholder, that he had buried divers of the Plague that died in his house in his

his Garden, Action lies, *Regist. orig. 173. B.* for by the speaking such words he is in danger to lose his Guests. But *quere* if he ought to alledge, that he is damnified thereby.

M is a Whore and hath the Pox, and they have made such holes in her that you may turn your finger in them, and K the Chirurgion hath given her a Diet drink to heal them, take heed how you drink with her, Action lies; 1. for calling her Whore, and this is the cause of the Pox, 2. the cure is published, to wit the Chirurgion and the Drink, 3. the contagion, take heed how you drink with her: *Ergo* it shall be intended the French Pox, and not the Small Pox, *Trin. 15 Jac. Ban. Regis Milner* and his Wife against Reeve.

1. A said of B, being a Barrester, that he had no more Law than a Jack-an-Apes, an Action lies, because it is an unreasonable Creature not having any Law, and it scandals him in his profession, *Micb 36, & 37 Eliz. Ban. Regis, Palmers case*, and it is as much as if he had said, he hath no Law.

For saying of a Counsellor, he will deceive you, he was of my Counsel and revealed my Cause, it is as much as if he had said, he hath no Law. *Revealer of a cause.*

No. Lib. Intra. 22. B. sect. 19. for this may hinder him from Clients.

For calling a man Rogue it lies not, *Kitchin 173.* Rogue.

B. But *quere* if he call him branded Rogue.

A says of a Preacher, thou hast made a seditious Sermon to day and moved the people to it, Action lies, because he is scandalized in his profession, *Coke 4. part. 19. case 15.* and he might then have been punished for preaching Sedition.

An Action. *de scandalis magnatum* was brought for saying, you like of those that maintain Sedition

F

tion

tion against the Queens proceedings, *Coke 4. part. 12. B. Cromwells case.* Q. if it lie, for the words are general, and it may be he did not know it.

Sorcery.

L said E did report, that your wife sacrificed her Child to the Devil to make away my Mother, Action lies, because sorcery is felony, *per 11 Jac. Regis*, and there is an evil intention and an act joyned together, *Pasch. 15 Jac. Locke versus Locke.*

Traytor.

It lies for calling one Traytor, *27 Hen. 8. 14. 30 Affize 29. Coke 10. part. 130. B. Osburns case.*

Thou diddest speak Treason, Action lies, *9 Jac. Brerford & Preston*; for speaking of Treason is Treason, and punishable.

Walter said P did say, that Mr. Lewis did say there was no Prince in England, an Action lies, for it cannot be intended but that he meant Prince Charles was not Prince; and because it toucheth the Plaintiff in his Allegiance it shall be taken in the favourablest sense as is, *Fama, fides, oculus non patiuntur ludum, Hill. 14 Jac. Ban. Regis, Lewis & Walter*; for it is not lawfull for me to say what I hear another say, if it tends to a third persons prejudice.

Usurer.

For calling one Usurer it lies not, because it meerly belongs to the Spiritual Court, *27 Hen. 8. 17.* and Usury is tolerated by the Law. But Q. if one call another Extortioner.

Whore.

It lies not for calling one Whore, *Mich. 9 Jac. Ban. Regis, Hudsons case, Coke 4. part. 18. A.* but it doth by the late Act.

But in London by customes it did lie before, but if it be removed to Westm. no *Procedendo* shall be granted, for such customes to maintain actions for brabbling

Action upon the Case.

brabbling words is against the Law, *Coke 4. part. 18. A. case 13. Q. tamen*, for Roll Chief Justice held it ought to be granted; but Bacon Justice to the contrary, 23 *Car. B. R. Izack*, against *Green*, & 24 *Car. B. R. Kings* case.

For saying of a Maid that she had a Bastard, an Action lies, 1. because it is punishable by our Law, viz. the Statute; 2. if she be to be married it hinders her preferment, *Coke 4. part. 16. case 11. Davies & Gardiner*.

For doing of wrong to the damage of another, touching Suits in Law.

For suing me in the Admiralty for matter about *neque super alium mare, neque ultra mare*, per 2 *Hen. 4. cap. 11. 5 Marie, Dyer 159. pl. 27.* and so not belonging to the Jurisdiction of the Admiralty.

But if one which is only Bailly in the Admiralty, and is arrested, when the principal matter is not determinable, there this Action lies, *quare*, for it was argued at the Bar, *Mich. 11 Jac. Com. Ban. Rot. 1127. Rowe versus Alporte*.

Against him that disturbs an Officer to make Attachment. Q. whether by the Officer, or the Plaintiff, or both.

Against a Bailly of a Franchise, that fraudulently delivers to the owner his goods attached, *Nat. br. 93. F. 2 Edw. 3. 43.* for the Law creates a privity; and here is breach of trust.

1. Against an Attorney that makes default, by which my land is lost, *Lib. Intr. 2. A. sec. 1. vide* the count there, viz. by negligence or collusion.

2. For suing debt in my name without my assent, *7 Hen. 6. 43. 44.* for it may prove to my prejudice.

F 2

3. For

3. For Appearing without warrant, and im-
parling where the party is misnamed, because his
Client loseth the advantage of the plea, 15 *Hen. 7.*
14. of *Misnomer*.

For taking an Obligation in his own name,
where it ought to be taken in his Masters, 20 *Hen.*
6. 25. for this is apparent wrong.

5. It lies for not executing his office, 20 *Hen. 7.*
9. *A. King smell. viz.* for Nonfeasance as well as for
Misfeasance.

6. It lies for Utlawing me in the name of B,
that was dead at the time, *Coke 7. part. 1. A. Bul-*
wers case; for there was no warrant for such Ut-
lawry.

7. It lies for pleading *Non sum informatus* with-
out warrant, 20 *Eliz. Dyer. 361. pl. 13. Q.* for it
seems he may do it in some cases.

8. It lies for appearing in default of the Te-
nant, and confessing the Action without warrant,
9 *Edw. 4. 13. 43 Edw. 3. 20. Regist. orig. 113. A.*
for hereby the Defendant is condemned.

9. Against him that will be my Attorney with-
out my assent, 42 *Edw. 3. 14.* for my election is
thereby taken away, which the Law will not per-
mit.

Counsellor. Against a Counsellor retained for a certain sum,
and he discovers his counsel, and was of Counsel
with the other party, and good, although he doth
not shew for what sum he was retained, 11 *Hen. 6.*
2. 18. *Action upon the Case 7. Lib. Intr. 2. B. sect. 2.*
for the Retainer is the principal, and the sum for
what is not material.

Against a Counsellor that is an Ambodexter,
Lib. Intra. 2. B. sect. 3. or on Counsel on both sides,
which

which is not lawful but in some case, by the consent of the parties.

Against him that sues me for Tithes in Court Christian, although I shew him a Composition by me time out of memory, 8 *Edw. 4.* 13. for he ought to sue at the Common Law. Christian Court.

1. Against a Sheriff that suffers one to escape upon a *Capias ad Computandum*; for he shall not have an action of debt, because there is no duty certain, 15 *Edw. 4.* 19. 16 *Edw. 4.* 2. 3. *escape* 37. and so, if he may not have this Action, he would be without remedy. Escape.

2. Against a Goaler that lets one escape that was committed upon the Statute of Labourers, 14 *Hen. 6.* 8. viz. by the Master of the Servant committed.

3. Against a Goaler that suffers one to escape taken upon a *Capias* upon a Statute Merchant, viz. by the Conusee of the Statute at whose suit the prosecution is, *Nat. br.* 93. A.

4. Against a Goaler that suffers one to escape upon Execution, *Lib. Intra.* 8. C. *SeE.* 1. for thereby the Plaintiff is deprived of his remedy to recover his debt.

5. Against a Prisoner that breaks prison and escapes, *Nat. br.* 95. C. 130. B. viz. by the Goaler, who is to answer for the escape.

6. Against an Officer that arrests one at my suit, and suffers him to escape, *Regist.* 111. A, & B. for I am thereby retarded in my suit.

Against a Sheriff that quashes essoyns in Reply *Essoyn.* erronee without assent of the Suitors, 20 *Affize* 45.

1. A having goods of B in his house, the Sheriff comes and takes the goods in execution, and Execution.

Action upon the Case.

4 him disturbs, 1. if the Sheriff gives notice to A, and after he disturbs him, the Plaintiff shall have this Action against him, otherwise not; 2. A may keep his house fast till notice; 3. the Count is not sufficient, that *A. premissorum non ignarus*, &c. but it ought to be alledged precisely that he had notice, *Coke 5. part. 93. A. Semaines case*, for the other is but by way of argument.

2. By hindering Execution by removing the Record by attain, *Regist. orig. 113. A. viz.* where there is no cause.

Against him that sues out Execution upon a Statute, as Executor of the Conussee where he is not, or where the Conussee is alive, 2 *Rich. 3. 8.* for this is deceitful.

1. Against a Sheriff that returns *quarto exactus*, where it should be *quinto exactus*, 9 *Hen. 6. 60. 81.* for by this false return the Plaintiff is hindred in his proceedings.

2. For returning Cattel estrayed, which are dead, 32 *Hen. 6. 27.* which is a false return, and may prejudice the party.

3. For making other return than the Bailly made, 36 *Hen. 6. 1. 30 Affize 5. viz.* the Bailly of a Liberty.

4. For returning a man of the enquest where he shews him a Charter to be priviledged to the contrary, 18 *Hen. 8. 5.* for thereby he is wrongfully molested and put to charge.

5. Against a Commissary that returns a *Jure patronatus* otherways than it is found, 22 *Hen. 6. 30.* to the hindring the due course of the Law.

6. Upon a *devastavit* returned falsly, *Lib. Intr. 11. A. sect. 11 Hen. 6. 37. B. viz.* where there was none, whereby the Executor is chargeable *de bonis propriis*.

7. For

7. For returning a man summoned where he was not, 26 *Affize* 48. 1 *Hen.6. pl.4.* or where he was not summoned by a reasonable time, 39 *Edw.3.7.* for that is all one in Law as if he were not summoned at all.

8. The same Law upon Garnishment, 2 *Edw.3. cap.14. Regist.orig.112.B.*

9. For returning *non est inventus* where the party was sufficient, and ought to be summoned, 31 *Edw.3. Proceß 55. Nat.br.39.B.* for such return is to his discredit, and the Law is tender of mens Reputations.

10. For returning a *cepi Corpus*, and had not the body at the day, the Plaintiff shall not have an Action upon the case, but shall sue him upon an account, 7 *Hen.4.31. Proceß 120. 2.* for it seems it lies.

11. For delivering a Distress, and returns not the Writ, 21 *Edw.3.43. viz. of Replevin*, whereby the proceedings are hindered.

Against a Deputy of a Sheriff, 20 *Hen.6. deceit 11.* for the Law takes notice of such an Officer.

12. For returning a *Nihil* where the party had sufficient, *Lib. Intr.11.C. fol.2. Nat.br.39 B.* for this is to his disgrace.

13. Against an escheator that certifies an office otherways than it is found, or that certifies one where there is none found, 21 *Edw.23. 9 Hen.6. 60. Regist. orig. 115. B.* for though it may be traversed, yet this puts the party to charges and trouble to do it.

14. By the new Sheriff against the old Sheriff for returning one sufficient, which is not, by which the Plaintiff, viz. the new Sheriff, is charged in issues, 19 *Hen.6.38.B. Paston.* F 4 15.A-

15. Against a Sheriff that makes a precept to one that is not Bailly of a Franchise, 38 *Affize* 13. as if he were Bailly of a Franchise.

16. If the Sheriff returns not a *cepi Corpus, sed languidus*, when the Defendant was in good health, he, *viz.* the Defendant, shall have an Action of false Imprisonment, 11 *Hen.* 6. 42. *pl.* 39. 2 *Hen.* 6. 5. *A.* And the other, *viz.* the Plaintiff, an Action upon the case, 21 *Hen.* 6. 5. *A.* for it is false return.

17. In a false Judgment, if the Sheriff returns that there is no such things, &c. if it be false Action lies, 10 *Edw.* 3. 389. *pl.* 35. *pro falsitavit.*

18. For the Sheriff shall not be amerced, 44 *Edw.* 3. 3. *pl.* 11. for it is no contempt to the Court, and they will take it for a good execution of the Process till the contrary Appeal.

19. If the Sheriff make a false return upon an enquest, the party hath no remedy, *Coke* 5. *part.* 32. *B. Pettifors case.* *Q.* for me seems an Action on the Case lies.

20. For not returning a Writ delivered by Bill by the old Sheriff, *Westm.* 2. *cap.* 39. 42 *Affize* 12. But note 8 *Edw.* 3. 3. 298. *pl.* 26. *Herle.*

21. It lies against a Sheriff for a false Return, *Doct. & Stud.* 134. *B.* 19 *Hen.* 6. 29. 5. 72.

22. For returning summoned where he was dead, Action lies. 8 *Edw.* 3. 330. *pl.* 1. for the Plaintiff is thereby deceived.


23. Against a Summoner that returns a man summoned where he was not, by which he was excommunicated, *Mieb.* 12 *Jac. Ban. Regis, Pole and Godfrey*, the Count and pleadings in the Reports; for the Common Law takes notice of Excommunications. For

For suing one upon a forged Obligation, *Coke 4. Forgery.*
part. 18.B. Q.

Against a *Custos breviarum* for embezzeling a Writ to him delivered, *7 Hen.4.6.* Imbezzeling.

For inciting another to imbezel a Writ, *19 Hen. 6.29.* if the Writ be thereupon imbezeled; for the Law favours not encouragers to do wrong.

If my Attorney or Deputy of the Sheriff imbezel a Record, Deceit lies, *10 Hen. 6.30.* in respect of Trust deceived, which the Law creates betwixt the parties.

For suing me before the Steward or Marshal, *Marshal.* where I am not of the Household, *3 Hen.6. Estoppel. 18. 10 Hen. 6. 13.* for every one ought to be sued in the Courts at the Common Law, and which are proper to try the Action. 

1. Against a Bailly of a Franchise that discontinues his plea, *Nat.br.93.F.* the Writ there, where it ought not to be. *Plea.*

2. Against a Bailly of a Franchise that sues after the plaint removed, *Nat.br.93.E. 14 Edw.3.* *Action upon the Case 39.* for then he hath no power to hold plea.

3. Against a Guardian which pleads a false plea, or vouches one that is not sufficient, *9 Edw.4.* *Action upon the Case 118.* by the ward, for it is to his prejudice.

Against him that procures one to say, he is *A.B.* the Plaintiff in the suit, and confesses the Action, *Procurement.*
8cc. Regist.orig. 113.B. for this is deceit.

Against him in Court Christian that proceeds after Prohibition delivered, *Nat.br.92.E.* the Writ shall say *contra pacem*, because it is in disturbance of the Common Law. *Prohibition.*

Against

Action upon the Case.

Against him that throws the Prohibition in the dirt, *Nat. br. 92. E. Regist. orig. 92.* the Writ shall say *contra pacem*; for this is in contempt of the Common Law,

Protec-
tion.

Against him who gets a Protection of the King for one, and gives it to another of the same name, 30 *Hen. 6. 18.* viz. by him who is thus deceived in the trust reposed in the party.

Against a Tenant in a *Præcipe* that hath a Protection to come to *Westm.* and stays at *Gloucester*, 15 *Edw. 4. 19. Regist. orig. 119. B. 20 Hen. 6. 10.* for this is an abuse to the Law, and prejudice to the party.

Against him that gets a protection, where he was not in service of the King, *Lib. Intr. 492. D. the Count 493. Sect. 2, 3.* and so abuse the King and the party.

Purchase
of a Writ.

Against him that purchases a Writ, whereby I am sued to pay a fine without my privy, *Regist. 112. A.*

Quare Impedit, 112. A. & B.

3. Against an officer in *Ban. Regis*, which purchases a *superfedeas* for one that I have a Plaint against in *London*, upon a false surmise that the Defendant is his Servant, 21 *Edw. 4. 23.* and so abuse the Court to the prejudice of the Plaintiff.

But upon surmise that he hath an Action depending there it lies not, because the Court cannot have notice, *ibidem. Q.*

4. Against an Officer in Chancery, which purchases a *Superfedeas* for his Servant, where he was not his Servant retained before the time, 11 *Hen. 6. 8.* for this is abusing his priviledge to anothers hurt.

1. By

1. By a Goaler against Rescouffors of one in Rescous.
Execution, *Dyer* 241. *pl.* 47. for he is liable to the debt thereby.

2. *A* being arrested upon a *Latitas* at the suit of *B*, and Rescouffed by *C*, *B* shall have an Action against *C*, and ought to shew that he intended to declare against *A* in debt; for there are no other Procefs in this Court, *Pasch.* 7 *Jac. Ban. Regis. Kemps* case, *viz.* the *Latitas* upon which one may declare in what action he pleaseth.

Against him that acknowledged a Statute in my Statute.
Name without my privy, 112. *B. Regist. orig.* for this may be very mischievous to the party.

Against him that sues me on purpose to vex me, Vexation.
8 *Edw.* 13. 43. 1 *Edw.* 3. 20. for the Law hates vexatious Suits.

But for causeless Suits no Action, 11 *Eliz. Dyer* 285. for, *pro falsa actionis prosecutione nulla sequatur pena*, 2 *Rich.* 3. 9. *pl.* 22. so that there was probable cause.

2. Against him that sues me for a thing arbitrated before that the day come to perform the award, *Regist.* 111. *A.* for this is unjust vexation.

For the not doing of a thing which ought to be done by the Law, touching a thing hereditary to the damage of another.

A Copyholder by Custome that may nominate Admission.
him which shall succeed him, and names one, and prays to be admitted, and offers reasonable fine to the Lord which refuseth; the Copyholder shall not have an Action of the Case against the Lord, because before admittance he had no right, *Pasch.* 13 *Jac. Ban. Regis, Forde and Hoskins.*

Beadle of
a Hundred.

A Beadle of a Hundred brought his Action on the Case against many Brewers, and prescribes to have three gallons of the best Beer of every Brewer for 7 d, and good, for it is not unreasonable; 1. He need not shew what estate he hath. 2. It is good against many, because all in common are accessory, 19 Rich. 2. *Action upon the Case* 51.

Enclosure.

Against him which ought to enclose against me, and doth not, by which my grass is consumed, 11 Rich. 2. *Action on the case* 36. — be it by his own Cattel or a Strangers.

But if it be between two houses, a *Curia clau-
denda* lies, *ibidem*. a Writ to enforce him to enclose his own Yard.

Feoffment.

A sold Land to B, and he will not enfeof him, Action lies, 22 Hen. 6. 44. *Newton*. 2. for he may make him another Conveyance.

Induction.

Against an Archdeacon which refuseth to Induct, which is as much as to give possession of a

Institution.

Living, 26 Hen. 8. 3. *Nat. br.* 47. because here the Archdeacon is in place of the Sheriff, *Mich.* 12 *Jac. Ban. Regis*, *Poole* and *Godfrey*. But in this case by *Doderidge* and *Coke*, it lies not against the Ordinary for not instituting a Clerk, because this is meerly Spiritual; in the case above specified; and the Clerk may be unfit, which they are to judge of.

Presenta-
tion.

A hath a nomination, and B the presentation; A names one, B will not present; yet an Action lies not by the Court, *Pasch.* 13 *Jac. Ban. Regis*, in the case of *Forde* and *Hoskins*; for B hath a greater interest than A, or equal.

To find a
Priest.

Against one that ought to find a Priest, and will not, viz. to say Mass, sing Dirges, &c. 21 Hen. 7. 5. 22 Hen. 6. 46. *Lib. Intra.* 2. D. *sess.* 5: this was
Law

Law in the time of Popery, but not now.

But if he shall be found by the Lord, and his Tenants of his Mannor, no such Action lies, *Coke 4. part. A. Williams*; but it shall be in the Court Christian, for the incertainty where the fault is that he is not found.

1. Against a Lessor that refuses to repair his house, *Dyer 36. pl. 37. viz.* where he promised to do it. But *quere*, if he do not promise.

2. Against him that ought to repair a Bridge, by which I have a way to my Mannor, *1 Hen. 4. 82. 45 Edw. 3. 17.* for I am hindred in my easement.

3. But if a Highway be not repaired, by which my Horse is mired, I shall have an Action, by *Heiden, 3 Edw. 4. 3. Q. viz.* for my particular miring.

4. Against him which ought to repair a Mound or Bank, by which my Land is drowned, *29 Edw. 3. 32. 12 Hen. 4. 7. Nat. br. 93. G. 7 Hen. 4. 31. pl. 13.*

5. So of the Banks of a River, *Nat. br. 93. G. 15 Edw. 4. 18. 45 Edw. 3. 17. 7 Hen. 4. 8. 31. 11 Hen. 4. 82. 83. 33 Hen. 6. 26. 29 Edw. 3. 32. pl. 49.* for in all these cases I am damnified, and am to be repaired by him that is the cause thereof.

But if they be broke by Tempest, no Action lies, *29 Edw. 3. 32. pl. 49.* for this could not be foreseen nor prevented, and so there is no fault in any body.

6. For not scouring Ditches, *1 Rich. 2. an Action upon the Case lies, 36. Nat. br. 93. G.*

7. For not repairing of a Gutter, *Lib. Intra. 10. D. sect. 1.* whereby another is damnified.

For

For not repairing a house that is ready to fall upon my house, *Crooke 22 Hen. 7. 98. pl. 4. per Finnew & Brudnel*; for I am like to suffer damage, and an Action may sometimes be brought to prevent a wrong.

X
Retain.

Against him that is retained to purchase Lands and doth not, *11 Hen. 6. 18. Q.* for it may be it is not to my prejudice, yet here is breach of trust.

But if he doth his endeavour it sufficeth, for *ultra posse non est esse.*

But if he be a Counsel with the other party an Action lies, *11 Hen. 6. 18. pl. 10. Babinton, & 55. pl. 26.* for then he is retained against me to my prejudice.

To hold Court.

Against a Lord in Ancient demesne which will not hold his Court, *11 Edw. 2. Action upon the case 46. lies*; for the Tenants may be prejudiced thereby.

Toll.

1. Against a Millar that refuseth to grind Toll-free for one that is Toll-free, *43 Edw. 4. 24. Crooke 130. pl. 100 l. per Keble*; for this is apparent wrong to take my goods where I am exempted by the Law from being charged.

2. Against him that bought or sold in my Market or Fair without paying Toll, *7 Hen. 4. 44. pl. 11.* for this is my loss, and to the ill example of others.

3. But if one pass over my passage or port where I have Toll, and doth not pay it, *quare* what remedy, *21 Hen. 7. 16. pl. 25.* It seems an Action on the Case doth lie, if it be demanded.

For

For not doing of a thing which ought to be done by the Law, to the damage of another, concerning Chattels.

A borrowed a Horse of B, which died suddenly without his default, Action lies not, 40 *Edw.* 3. 36. for this is the act of God, and not the fault of the borrower. Borrowed.

It lies not against an Attorney that will not do his office unless he be retained, 20 *Hen.* 7. 9. for he is but in the nature of a Servant, and is not bound to be retained. Attorney.

Against a Bailly that hath money to bail my Attorney, and doth it not, 20 *Hen.* 6. 9. B. Bailment.

Against my Servant, because he pays not money for bailing and saving harmless, 20 *Hen.* 6. 9. for I may be damnified thereby.

S being a Dutchman, his Parents being subjects to the King, brought an Action against a Customer for not putting a Cocket upon his Merchandize, and avers that he tender'd the Customes. *Coke Ch. Just.* said, that inasmuch that the Dutchmen here assembling are not of our Nation, nor free of any company of Merchants, that the Action lies not, *Pasch.* 14. *Jac.* Stephens his case. Cocket.

1. Against a Smith that refuseth to shoe my Horse, 14 *Hen.* 6. 18. *Crooke.* 18 *Hen.* 7. 50. pl. 4. for this is for the publick good as well as private. Farrier & Smith.

2. But then he ought to have all necessaries, and his wages tendered, 2 *Hen.* 6. 55. 2. for the wages are not due till the work is done.

3. Against a Farrier that applies medicine, and cures not my Horse. But if no default be in him, it lies not, 19 *Hen.* 6. 49. 43 *Edw.* 3. 33. 48 *Edw.*

Edw. 3. 6. for he doth his best according to his skill.

Innkeeper. Against an Innkeeper that will not lodge me, *39 Hen. 6. 18. Crooke. 18 Hen. 7. 50. pl. 4. 14 Hen. 7. 22. B. Higham,* for it is against the good of the weal publick.

Pledge. 1. Against him that will not deliver my Pledge upon tender of the money borrowed, *Nat. br. 86. C. Regist. 91. B. Lib. Intra. 8. B. Sect. 1.* for the Pledge is judged to be more worth than the Money.

Servant: 2. Against a Servant that will not do his service, *2 Hen. 7. 11. B. Q.* for the Master is dammified thereby.

For his Wages is certain by the Statute, and he hath his Action to recover it, *3 Hen. 6. 36. B.* So note, it must be a Covenant-Servant hired according to the Statute.

3. Against one that will not serve not having Land, *Regist. orig. 101. A. & B.* for such are bound by the Law to serve.

4. Against one that will not serve in Summer, *Regist. orig. 101. B.* In time of Harvest it seems more especially.

For the not doing of a thing which ought to be done by the Law, to the damage of another touching his Body.

Innkeeper. Against an Innkeeper that refuseth to lodge me, *39 Hen. 6. 18.*

Bar. A good bar that his house was full, and had no room, *5 Maria, Dyer. 158. pl. 32.* for he is not bound to provide lodging out of his own house.

Chirurgion Against a Chirurgion that takes upon him a Cure

Cure, and neglects it, 48 *Edw.* 3. 6. whereby the Cure is become impossible, or is retarded.

Against a Victualler that refuseth to sell to me, Victualler. 39 *Hen.* 6. 18. for his profession is for the publick, and he ought to make no distinction of persons.

For not doing of a thing which ought to be done by the Law, to the damage of another touching Suits in Law.

1. It lies against an Attorney that is retained, Attorney. and makes default; *Lib. Intr.* 2. *A. sect.* 1. *Regist.* orig. 113. *A.* if his Client be prejudiced by it.

Against a Clerk of Assize that takes a Fee, and Clerk of enters not the Jury, 34 *Hen.* 6. 4. for thereby the Assize Cause is delayed by his nonseafance.

Against a Feoffee to use, which doth not plead Feoffee to according to the directions of the Feoffor, 14 *Hen.* use. 8. 24. *E. pl.* 2. *Q.* for the pleading is for his advantage or disadvantage.

Against a Lord of a Mannor that will not hold To hold his Courts, 11 *Edw.* 2. *Action upon the Case* 46. Court. for the Tenants of the Mannor are thereby prejudiced, and the Lord is, as well bound to hold his Courts duly, as the Tenants are to do their services.

1. Against a Sheriff that will not execute Pro- Sheriff. cess, 14 *Hen.* 7. 23. the party being shewed to him, 8 *Edw.* 4. 14. 17. for Justice is thereby delayed.

2. For the Plaintiff against a Sheriff that will not return his Writ, 2 *Hen.* 6. 5. 8 *Edw.* 4. 14. 7. for he is thereby hindred in his Suit.

3. Against a Sheriff that will not return an Outlawry, 42 *Assize* 12. for though it properly concerns the King, yet the party may receive prejudice by not returning it.

G

4. For

4. For delivering a distress upon a second deliverance, and not returning the Writ, 2 *Edw.* 3. 43. for thereby the further proceedings of the Avowant are hindered.

Assumpsit.

For the not doing of a thing which ought to be done by the agreement of the party to the damage of another, touching things hereditary.

Assumpsit.
Quid.
Quotuplex.

A *ssumpsit* is either by word, } Indented.
or deed. } Poll.

If it be by Covenant it lies, and needs not any consideration to be averred, 2 *Hen.* 7. 11. 21 *Hen.* 6. 55. for a Covenant supposeth a consideration, because it is a solemn act.

If it be by word, then it ought to be upon a consideration, otherways it is but *Nudum pactum unde non oritur actio*; for the other hath no wrong, though the promise be not performed.

Confideration.
Quid.
Quotuplex.

A Consideration is a cause or occasion meritorious, requiring mutual recompence in deed or in Law; in Deed expressed in words; in Law not expressed, but created by Law, 16 *Eliz.* Dyer 336. B. pl: 34.

The Consideration is either expressed in words, or implied by Law; in every Contract there is an *Assumpsit* or promise implied by Law, *Coke* 4. part. 94. *Slades* case.

If it be expressed it ought to be shewed in the Count or Declaration, 3 Hen.6.36. 11 Hen.4.33.

A Consideration of a thing past is not good, *Doct. & Stud.* 104.B. except it be a continuing consideration and benefit to the party.

An *Assumpsit* may be made in the absence of another, if he will agree to it afterward, 27 Hen. 8.24. and it shall be all one as if it were made to the party. *Quare*, whether he that assumed may not refuse before the other consent.

General Bar.

1. Concord pleaded, viz. after the *Assumpsit* made, *Lib. Intr.* 6.C. *sect.* 6.

2. *Non assumpsit*, and this a man may plead although there is no consideration, *Pasch.* 26 *Eliz.* *Ban. Regis*; for if there was no consideration for the promise, it is all one as if there had been no such promise made.

But if the former were upon an entire sum upon two *Assumpsits*, then no bar, *Trin.* 14 *Jac.* *Ban. Regis*, *Paine* and *Selley*.

A good Bar that he promised upon Condition, which is not performed, *Lib. Intr.* 5.D. *sect.* 1. and so he is not bound to perform his promise, for the Condition is to be precedent.

Non emissit the Land of him, a good bar, *Lib. Intra.* 6.B. *sect.* 5. viz. an Action brought for moneys promised to be paid upon a purchase of lives.

That the Plaintiff discharged him of the bargain, a good bar, *Lib. Intr.* 685. C. *sect.* and so there could be no money due upon it.

To make
an estate.

The Action lies, 1. against him that sells Land to me, and promises to make an estate, and doth it not, 3 *Hen. 7. 14.* 14 *Hen. 8. 15.* 21 *Hen. 7. 41.* 2 *Hen. 7. 11, 12.* 20 *Hen. 7. 9.* 22 *Hen. 6. 44.* 20 *Hen. 6. 34.* *Lib. Intra 5. D. Sect. 1.* and 685. *B. sect. 1.* the Writ, *Lib. Intra 6. A. Sect. 2.* for I am thereby prejudiced in my title to the Land.

2. Against him that sells Land to me, and promises to give me seisin of it, and does not, *Regist. 112. A.* for he hath consented to pass the Land by that kind of Conveyance.

3. *A* promises to convey Land to such a person as *B* shall name, and the Defendant shews, that he conveyed it to *B*, this is good; for it shall be intended a nomination in *B*, inasmuch that he did accept of it, *Mich. 13 Jac. Com. Ban. Huligo and Wilde*; for he might nominate himself as well as another.

4. Against him that first sells Land to me, and afterwards sells it to another, *Lib. Intra. 685. B. sect. 1.* *Nat. br. 98. F.* 20 *Hen. 6. 34.* for I may be thereby troubled in my possession.

5. The same Law is, if he grant a Rent, and afterwards infeof me, not giving me notice of the Rent, 20 *Hen. 6. 34.* for thereby my Land is charged.

Ditch.

Against one that promises to scour his Ditch, and doth not, by which my Land is drowned, 3 *Hen. 6. 36.* and I damnified.

Cranage.

Against an Alien that brought Salt to London, and promises to the Major to pay so much as shall be due for Cranage, 18 *Eliz. Dyer 352. pl. 27.* and doth it not, for here is damage by the loss of the profit.

Lessor.

Against the Lessor that promises, that the Lessee shall

shall enjoy *pacifice & quiete*, and is expelled by a Trespassor, 16 *Eliz. Dyer* 328. pl. 8. Q.

1. Against him that promises to amend his House. house, 19 *Hen* 6.49. and doth it not. Q. whose House.

2. For not building a House according to his promise, 2 *Hen*. 6.55. 21 *Hen*. 7.41. 20 *Hen*. 7.9. 14 *Hen*. 6.18. *Nat. br.* 145. G.

3. Against him that promises to cover a house, and doth it not, 3 *Hen*. 6.36. 14 *Hen*. 6. 18.

4. A Leases a House to B at will, and in consideration that he will permit him to enjoy it till such a day, he promiseth to keep A harmless from all damage, *ratione inhabitationis & occupationis Messuagii prædicti*, and for every farthing hurt he will satisfy 2 d. upon request: The Servant of B suffers the house to be burnt, 1. the *Assumpsit* extends to negligent waste, because it is a damage to the Lessor; 2. the Plaintiff ought to shew how many farthings he is damaged, or else he cannot recover two pence for every farthing; 3. he ought to request so many farthings due to him, and to demand two pence for every one in a gross sum; 4. upon the promise to the Tenant at will; 5. he needs not to averr, that he did there inhabit at the time, &c. for if he occupied it; it is sufficient; 6. by the *assumpsit* that B should have it until, &c. And it being a Lease for years, ergo the Action lies not, *Mich*. 9 *Jac. Ban. Regis, Coventry & Woody*. Q.

Against him that promises to purchase Land for Purchase. me of B, and doth not do it, he is not excused though B will not sell it, 11 *Hen*. 6.18. 3 *Hen*. 7. 14. for by his promise he is bound to do it at his peril.

Cr. L.

But if he be retained and do his endeavour he is excused, 16 *Hen.6. Action upon the Case* 44.

Release. Against him that promises to make B. to release to me, and doth not, 14 *Hen.6.18. pl.58.*

Assumpsit. For not doing of a thing which ought to be done by the agreement of the parties touching Chateaux.

Agistment. 1. Against him that puts in Cattel without paying for the Agistment, *Nat. br.86. B. Regist. orig. 92. A.* the Writ there; for here is not quid pro quo in recompence.

Annual payment. Against him that promises to pay 10 l. a year for Land for four years, and fails of the first payment, Action lies presently, *Coke 3. part. 22. A. Walkers case, 3 Maria. Dyer 113. pl. 54. pro tanto.*

Trees cutting. Against him that promises to cut Trees and carry them to my house, *Regist. 109.B.*

Arbitrement. Against him that promises an agreement, and doth it not, *Coke 5. part. 77.B. Sammons case. No. Lib. Intra. 3. B. sect. 4.* for the other thereby is de-laied in his right.

Assent. A grants his term to B, if C agree, B promises 20 l. to C for his assent, this is a good *assumpsit*, *Trin. 12 Jac. Com. Ban.* in the case of Griesly and Loutber; for the assent shall be intended to be for his benefit.

1. Against one that promises to re-deliver money, and doth not, *Lib. Intra. 10. sect. 1.*

2. Against a Bailly that takes upon him to keep Cattel safe, and doth not, *Lib. Intra. 9. A. sect. 1. & fol. 3. B. sect. 1.* but they are lost by his negligence.

3. But if he promise to guard the goods, and after refuses, no Action lies, *Doct. & Student.*

102. B. if there were no consideration taken to do it.

1. Against a Carrier that undertakes to carry Carrier.
goods safe, and doth not, 2 Hen. 7. 11. Lib. Intra.
2. D. sect. 1. the Carrier is chargeable without such
a promise *per legem terre.* T

2. Against him that promises to carry Wine,
and breaks the Pipe by negligence, Regist. 110. A. +
for one man must not be prejudiced by another's
negligence.

So if Oyl be carried, Regist. orig. 112. A.

Against him that promises 10 l. for the curing Charitable
a poor man, Doct. & Student. 104. A. and pays it deeds.
not. |

For upon every promise, if the party be charged
with it, an Action lies, although the other have
no benefit, Doct. & Student. 104. A. but there must
be a benefit to some body.

Against him who promises to make a Coach, Coach.
and doth not, Nat. br. 94. A.

But the Plaintiff ought to count, that he did
give money for the doing it, otherways it is but
Nudum pactum, unde non oritur actio, 3 Hen. 6. 36.
pl. 33. for there was not reason why he should do
it. *

A promises, if B will assist him in the gathering Gathering
ing of the Tithes of Cheefe, and Apples, and Tithes.
other Tithes till such a time, he should have 20 s.
and B shews, that he did assist him so long in the
gathering the said Tithes, and good; for *non*
constat that there are other Tithes, if there be
they ought to be shewed by the other party, Mich.
7 Jac. Ban. Regis, Baker & Secker.

But if he be retained and do his endeavour he is excused, 16 *Hen.6. Action upon the Case* 44.

Release. *pro.* Against him that promises to make B. to release to me, and doth not, 14 *Hen.6.18. pl.58.*

Assumpsit. For not doing of a thing which ought to be done by the agreement of the parties touching Chateaux.

Agistment. 1. Against him that puts in Cattel without paying for the Agistment, *Nat. br.86. B. Regist. orig.92. A. the Writ there; for here is not quid pro quo in recompence.*

Annual payment. Against him that promises to pay 10 l. a year for Land for four years, and fails of the first payment, Action lies presently, *Coke 3. part. 22. A. Walkers case, 3 Maria. Dyer 113. pl.54. pro tanto.*

Trees cutting. Against him that promises to cut Trees and carry them to my house, *Regist.109.B.*

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laied in his right.

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2. Against a Bailly that takes upon him to keep Cattel safe, and doth not, *Lib. Intra.9. A. sect.1. & fol.3. B. sect.1.* but they are lost by his negligence.

3. But if he promise to guard the goods, and after refuses, no Action lies, *Doct. & Student.*

102. B. if there were no consideration taken to do it.

1. Against a Carrier that undertakes to carry Carrier.
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2. Against him that promises to carry Wine,
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for one man must not be prejudiced by anothers
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Against him that promises 10 l. for the curing Charitable
a poor man, Doct. & Student. 104. A. and pays it deeds.
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For upon every promise, if the party be char-
ged with it, an Action lies, although the other have
no benefit, Doct. & Student. 104. A. but there must
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Against him who promises to make a Coach, Coach.
and doth not, Nat. br. 94. A.

But the Plaintiff ought to count, that he did
give money for the doing it, otherways it is but
Nudum pactum, unde non oritur actio, 3 Hen. 6. 36.
pl. 33. for there was not reason why he should do
it.

A promises, if B will assist him in the gather- Gathering
ing of the Tithes of Cheese, and Apples, and Tithes.
other Tithes till such a time, he should have 20 s.
and B shews, that he did assist him so long in the
gathering the said Tithes, and good; for *non*
constat that there are other Tithes, if there be
they ought to be shewed by the other party, Mich.
7 Jac. Ban. Regis, Baker & Secker.

Dove-
house.

Against him that takes upon him to repair my Dove-house, and doth it ill, *Regist. orig. 110. B.* whereby my house becomes of less profit. A work ill done is accounted as not done.

Cross.

Against him that promises to make a Cross, and doth not, *Regist. 109. B.* This Action it seems lies not at this day. *Q.*

Delivery
of a deed.

A promises to deliver a deed upon request, the request ought to be shewed precisely, otherways if it be of a thing due before, or upon a sale; for in the former case the request is traversable, but not in the latter, *Pasch. 28 Eliz. Com. Ban.*

Discharge
of a Prisoner.

Against him that promises to pay me as much as the other owed him, if I will discharge him of the Prisoner, 27 *Hen. 8. 24.*

Farrier &
Smith.

1. Against a Smith that takes upon him to shoe my Horse, and doth not, 14 *Hen. 6. 18.*

2. Or to cure him, 19 *Hen. 6. 49. Regist. orig. 119. B.* but here must be a consideration precedent.

It is not sufficient to do all he can, but he is bound to cure him: But upon a general retainer, without taking upon him the Cure, it is not so; for there the Law implies only, that he would do his best endeavour to do it, 43 *Edw. 3. 33. 45 Edw. 3. 17. 48 Edw. 3. 6. 27 Assize 56.*

And the Writ shall not say *contra pacem*, 43 *Edw. 3. 33.*

3. *Quare tam negligenter & improvide imposuit medicinas, &c. quod equus mortuus est*, 43 *Edw. 3. 33. pl. 38. 19 Hen. 6. 49.* for the Law punnisseth negligence.

Ferryman.

1. Against a Ferryman that takes upon him to carry one over the water, and doth it not, and this

this without consideration, because his fare is certain, 22 *Affize* 41. and recoverable by Law; for the Law makes the Contract.

2. For surcharging his Boat, by which my Beast is drowned, 22 *Affize* 41. *Action upon the Case* 40. for this is a mistake of fact.

An Administratrix desires to be forbore till such a time, and then she will pay the debt; this is a good *assumpsit*, *Coke* 9. part. 94. *A. Baner* case; and the Plaintiff needs not say in the Count that she hath assets, for it shall be intended; but it ought to be given in evidence, for she is not chargeable if she have not *quid pro quo*, *Coke* 9. part. 92, 93, 94. *Baner* case, & fol. 90. *B. Pinchons* case.

The same Law is of a Strangers promise, *Coke* 9. part. 94. *A.* for though the Stranger it may be hath no benefit, yet the Plaintiff may be prejudiced.

But then he ought to shew that the Plaintiff agreed to it, *Mich.* 39 *Eliz. Com. Ban. Milwards* case.

Then the Count ought to shew how the debt grew due, *Coke* 10. part. 77. *A. Marshalls*; for if there were no debt, there can be no cause of Action.

A counts that *B* was indebted to him in 20 *l.* but shews not how long; and that the 10. of September 7 *Jac.* *B.* promises, if the Plaintiff would not arrest him, but forbear till the 21. of September he would pay him; and sets forth, that he did forbear so long *per Curiam*: if the Plaintiff counts of the forbearance for a certain time, there it is good, without shewing when the debt grew due; but otherways when the forbearance is for a time

time uncertain, *Trin. 9 Jac. Ban. Regis, Dean & Nuby. Q. differentiam.*

The Count was, that the Intestate was indebted to him in a 100 *l.* and the Administrator in consideration of forbearance for a reasonable time assumes to pay, and upon *non assumpsit* pleaded it was found for the Plaintiff; 1. *Coke* Chief Justice said, forasmuch as the Intestate was indebted, and the Administrator promised, &c. and pleaded *non assumpsit*, it shall be intended he had notice of the debt, therefore good; to which there was no answer: 2. forbearance by a reasonable time is a good consideration, because the Court may judge of it: but forbearance *per paululum temporis* is not good, to which the Court agreed, *Trin. 14 Eliz. Ban. Regis, Lingill & Broughton*; for the Court cannot judge of it, because it is incertain.

The Count was, that where *A.* was indebted to him in 32 *l.* for which he sued *A.* and that it was agreed between him and *A.* to stay the suit, and if he payed it not before *Mich.* he should give security; 1. he need not shew how the debt grew due, because the forbearance is the cause of Action, but otherways when the Testator is indebted and promises, for there the debt is the cause of the Action; 2. *Coke* Chief Justice, that he needs not shew, that he did surcease his suit, because it was but a reciprocal agreement; but if *A.* in consideration that the Plaintiff shall surcease his suit promises to pay it, then he ought to shew that he did surcease, *Pasch. 14 Jac. Ban. Regis, Fullers case*; for that is the ground of the Action.

W indebted to *B.* delivers goods to *L.* to pay him, *L.* prays *B.* to stay 2 or 3 days, and he will pay

pay him, *L* pays it not, *B* shall have an Action against *L*; for it is a good consideration, insomuch that *L* had goods to satisfie, *Mich. 7 Jac. Ban. Regis, Brande & Lister*, by his own confession implied in his *assumpsit*.

A pledges goods to *B* for money, and if *A* pay not at such a day, that *B* shall have the goods after and afore the day, &c. *C* requests *B* to forbear till another day and he would pay it, *B* may have an Action against *C*, if he pay it not; for if *C* pay the money, then he may have a Detinue against *B* for the goods, for by the payment *C* had a special property, *Trin. 13 Jac. Ban. Regis, Capper & Dickinson*; per *Coke* Chief Justice.

Against a Goaler that promises to the Sheriff Goaler. to keep safe his Prisoners, and lets them escape, *Regist. 110. A. & B.* for the Sheriff is answerable for the safe custody of the Prisoners within his County.

Against him that warrants for 10 *l.* that my Warranty. Boat shall come safe upon the *Thames*, 34 *Hen. 8. br. Action upon the Case* 107. and it doth not; for there ought to be *quid pro quo*.

A Leases to *B* rendering Rent, and paying all Lessor. out-Rents and making reparations; the Lessor in consideration of this, promises *defendere & sustentare statum & possessionem* of the Lessee, *quiete & pacifice absque interruptione*; 1. here is a good consideration: 2. the said Clause amounts to so much as if he had said, that the Lessee shall quietly enjoy his Term, *Mich. 7 Jac. B. R. Gamble & Terrell*.

1. Against him that promises in Marriage 10 *l.* Marriage money. if he marry his daughter, *No. Lib. Intr. 2. B. sect. 2, & 4. B. sect. 1. Doct. & Stud. 104. A. 16 Hen. 3. Prohibition 22.* for the Marriage is a good consideration.
2. *A.*

2. *A* being to marry *B*, *C* living with *A* says to *B*, if she should marry *A* and his Father do not make such a Joynter to her, he would give her a 100 *l*. *B* marries *A*, the Joynture is not made, *A* and *B* shall have an Action against *C*; for peradventure the marriage had not taken effect, but in regard of the promise of *C*, *Mich.* 29 of *Eliz.* *Ban. Regis.*

3. *A* promises to *B* 100 *l*. in consideration that *B* marrie his Daughter; this is a good consideration, insomuch that the advancement continues, being even as in Frank-marriage after the marriage is good, *Trin.* 29 *Eliz.* *Ban. Regis*, *Marche & Raynesforde.*

4. *A* promises to *B*, that whereas his Son was a Suiter to his Daughter, if *B* would give his assent *A* would give to *B* 50 *l*. This is a good consideration, 1. because the Daughter ought to have the consent of her Parents; 2. because the Son of *A* was to have advancement by the marriage, *Trin.* 12 *Jac.* *Com. Ban. Graicely & Lousber.* Q. whether a man shall be intended to be advanced by marriage, except it be shewn.

5. *A* promises 50 *l*. to *C*, if he marries *B*. In an Action upon the case for the 50 *l*. he is not bound to shew that he did give notice of the marriage, neither to make request, *Mich.* 7 *Jac.* *Ban. Regis*, *Brently & Tod*; for *A* might as well take notice of the marriage as *B*, and the bringing of the Action is a request in Law.

6. *A* having speech with *El.* *Stukely* about marriage with her, promiseth to *M.* the Daughter of the said *Eliz.* that if she marry him without disposing of her estate, he will give to *M* in marriage

riage 40 l. and in an Action brought upon this, inſomuch that ſhe did not averr in his count, that ſhe had not diſpoſed of her eſtate, it was not good, *Mich. 15 Jac. Ban. Regis, Kings caſe*; for that was the ſole conſideration.

Againſt him that promiſes to obtain a Leaſe for me for 10 l. and gets it for himſelf, 3 *Hen. 7. 14. Leaſe.*

Quere, whether an Action of Deceit doth not lie.

A in conſideration of divers ſums received of Payment. divers perſons to the uſe of the Plaintiff amounting to 24 l. aſſumes to pay this, and adjudged a good count, though he doth not ſhew of whom he received the ſums, becauſe this is not traversable, for it is a conſideration executed, *Trin. 14 Eliz. Ban. Regis, Beckingham & Lambert*; for the Account is confeſſed by the promiſe to pay.

Counts that upon an *in ſimul computaſſet* the Defendant was indebted to him in 20 l. and promiſed to pay it, &c. *Crook* Juſtice ſaid it was a good conſideration; and *Doderidge* ſaid, that in every Action of debt an Action of the caſe is implied, and when it appears how the debt grew due, then it is a good *Assumpsit*, *Trin. 14 Jac. Ban. Regis, Culmore and Eyniſon.*

Againſt him that takes upon him to plant Planting. Thorns, and doth not do it, *Lib. Intr. 13. C. ſed. 1.* +
for the planting may be for my benefit.

1. My Servant being in priſon, I requeſt his enlargement, and promiſe to ſave *A* harmleſs, an Action lies if I do it not; but without requeſt not, 10 *Eliz. Dyer 272. pl. 31.* Save harmleſs.

2. If one become Bail for the Servant, and after the Maſter promiſe to ſave him harmleſs, an Action lies

lies not; for here is no consideration continuing.
Quere, if he continue his Servant.

3. *A* being Bail for *B* in *Ban. Regis*, *B* promises to save him harmless; yet *A* shall not have an Action against *B* although he pay the money, if no *Capias* be awarded against the Principal, nor *Scire facias* against the Bail, *Trin. 7 Jac. Ban. Regis*: *Bolles & Jones* error upon Judgment in *Com. Ban.* for here is no due proceedings in Law against either.

4. *A* being indebted to *B*, prays *G* to be bound to *B* for the debt, and he will be bound to *C*, &c. *C* is bound to *B*, &c. *A* refuseth to be bound to *C*; *C* shall have an Action against *A*, for it is a good consideration inasmuch that *C* is liable to the debt, *Mich. 9 Jac. Ban. Regis*, *Knyvet & Pledall*, and it is reason *A* should secure him.

5. *A* promises to *B* to discharge him, and save him harmless from all bonds in which he was bound for the Son of *A*, at the request of the said Son *B* brought his Action, and shews that he as *fidei jussor* was bound. 1. It is a good consideration. 2. He ought to shew precisely that his Son requested him to be bound; for although *fidei jussor* imply a request, yet it is not sufficient, *Pasch. 9 Jac. Ban. Regis*, *Somerston & Barnby*, & *postea Mich. 9 Jac.* it is shewed that it was alledged, and for this judgment was given for the Plaintiff, *Lib. Intr. 11. C. Sect. 1.*

Infant.

6. An Infant borrows money, *B* is bound to pay it, at full age the Infant promises to save him harmless, Action lies upon it; for although the Infant was not liable in Law, yet in Conscience he was, and this sufficeth to maintain an Action upon the

the Case, which is an equitable Action; for the consideration is good, *Trin. 29 Eliz. Ban. Regis* adjudged.

A Widow promiseth for following her Suits to pay 200 *l.* this is not good; for it is maintenance per 2. Justices, but *Dyer* against them; because it did not appear that they were Suits in Law, 19. *Eliz. Dyer* 356. and they may be Suits in equity, or at the Court. Solicitor.

A promises 10 *l.* to B, if he suffer C to enjoy the Land; there although C enjoy it not, yet if A agree and do not interrupt C the Action lies, *Pasch. 15 Jac. Ban. Regis; Taylor & Wilks*; for he hath performed the consideration on his part. Sufferance

A being a Copyholder makes B his Executor, and intends to surrender, to the intent that B should satisfy a debt to D; the Son of A promises A that if he do not surrender, but suffer the Land to descend, he will satisfy the debt, A dies, B shall have an Action against the Son; for it is a good consideration, *Hill. 9 Jac. Ban. Regis; Gray versus Gray*, yet continuing.

A promises to pay to B, for his reasonable board for such a time as he shall be with him; B shews that he was with him ten months, and that 5 *s.* the month is reasonable, amounting in all to 50 *s.* this is good, *Pasch. 30 Eliz. Ban. Regis; Floyd & Irish.* Tabling & Lodging.

A being sick in an Inn, B promises to pay as much as shall be due for all necessaries that the Inn-keeper shall provide for A; yet in the Action the Inn-keeper shall say generally in the Writ and

and Count, that he did provide necessaries from such a day, until, &c. in all to the value of 20 l. forasmuch as the promise was general, the Writ and Count is good though it be not particular. 2. It is inconvenient and dangerous to shew all things that he did provide, &c. the same Law is for a Physician *per Doderidge Justice. Pasch. 13 Jac. Ban. Regis, Crips & Baynton*; for he may not remember all particulars, and so may mistake.

Vendor.

1. For money upon the sale of any personal things, 33 Hen. 8. *br. Action upon the Case* 105. 110. 2 Rich. 3. 14. Com. 102. upon an *indebitatus assumpsit*; for the Law creates a promise.

For in every Contract there is an *assumpsit* implied, *Coke 4. part. 94. Slades case*; the Count needs not shew, but *sepius requisitus*, *Pasch. 28 Eliz. Com. Ban. Q.*

2. In an Action for money upon the sale of a thing, he needs not count that he was possessor *ut de bonis propriis*, *Trin. 7 Jac. Ban. Regis, Fitz William & Blackman. viz.* before the sale; for the Law implies they were his, else he would not have sold them.

3. Against a Purveyor or Servant that bought goods for his Master, and promises payment, *Dyer 230. pl. 56. 12 Hen. 8. 12. Q.* if it lies not also against the Master.

4. Against him that promises to a Baker to pay so much as he shall deliver in Bread to B, 29 Hen. 8. 25. for it may be intended he gave B the Bread.

5. Upon a promise to pay for Cloth bought, if B doth not, 12 Hen. 8. 12. for there he becomes in the nature of a Surety for the payment for it.

6. A

6. *A* brought an action, and shews that he sold a Horse to *B* at such a day, year, and place, to be payed at a day to come, and the Defendant *ad tunc & ibidem ratione præmissorum* assumes to pay, if, &c. *B* did not; this is nought, for the Contract, and the giving of day to *B*, *ne fuit ad instantiam* of the Defendant; but the Contract was compleat before, *Pasch. 28 Jac. Ban. Regis, Farmer & Field*, without any relation to the Defendant and his promises *ex post facto*, and grounded upon no consideration.

7. *A* promises to pay to *B* such sums of money as *B* shall disburse of his own money for Cloth, to the use of *A* the Defendant, this is a good consideration: for by the buying of the Cloth the property was in *A* forthwith, *Trin. 9 Jac. Ban. Regis, Moore & Moore*; for it was bought for him.

8. *A* sold to *B* two ways of Barley for as much as he sold to others, the Plaintiff in the Action ought to count, 1. For what price he sold to others; 2. he ought to give notice of this to *B*. So if *A* promise to *B* 20 *l.* if he marry *C*, yet *B* ought to give notice of the marriage; but a Tayler may have an Action for as much as he shall deserve, and is not bound to give notice what he shall deserve, because it is not uncertain, *Hill. 13 Jac. Ban. Regis, Hall & Heminge*. *Q.* for he must demand a certain sum, and this is notice.

1. Against a Seller of Corn to be delivered at a certain day, and doth not, 21 *Hen. 6. 55. 20 Hen. 7. 9. 28 Hen. 8. Dyer 22. pl. 138. & fol. 113. pl. 55. Coke 4. part. Slader case 94. B. Quere*, if no damage appear.

Vendec.

H

2. For

Assumpsit.

2. For delivering good and merchantable Corn, and doth not, 6 *Edw. 2. 6. Dyer 75. pl. 23. Lib. Intra. 4. B. sect. 2.* but special dammage must be alledged.

✦ *The Judgment.*

For not delivering of grain yearly, *quare* if the Plaintiff shall recover dammage as well *pro tempore futuro quam pro præterito*, 3 *Maria, Dyer 113. pl. 56.*

✦ Administratrix promises to pay a debt, &c. and the Action is brought against Baron and Feme, then the judgment against him shall be general, & *prædictus P. & M. uxor ejus in misericordia*, *Coke 9. part. 93. Banies case, No. Lib. Intra. 2. C. Sect. 3.*

But upon plea, that the Testator did not assume, costs and dammages shall be *de bonis propriis*, if the Testator had not sufficient, *No. Lib. Intra. 1. B. sect. 1.* for the false plea.

The Writ.

Upon *assumpsit* by the Husband and Wife, made to the Wife *dum sola fuit*, the Writ shall say, *ad dampnum ipsorum*; for the Husband shall have the dammages, *ideoque fuit ad dampnum ipsorum*, *Hill. 9 Jac. Ban. Regis, Wolverson and his Wife against Day.*

For

For not doing a thing which ought to be done by
Agreement touching the body.

1. Against a Barber that takes upon him to Barber.
raze the Beard, and doth it with an unwholsom
Razor, *Lib. Intra. 2. C. sect. 1.* for the body is en- +
dangered to be hurt thereby.

2. Against a Physician or Chirurgion for not Physician
curing a malady, or not applying a medicine, 14 or Chirur-
Hen. 6. 18. 43 Edw. 3. 33. 21 Hen. 6. 55. 48 Edw. 3. 36. pl. 11. Regist. orig. 105. B. 112. A. geon.

3. For adviling his patient to apply a certain
medicine to cure him, and it did not, 19 *Hen. 6.*
49. *quare.* + *Pr. L.*

For commanding his Servant to apply a medi-
cine, and he doth it not, 11 *Edw. 4. 6. Q.*

4. For applying a medicine that impairs the
Mayheme, 11 *Rich. Action upon the Case 37. 11*
Hen. 6. 18. pl. 10. 21 Hen. 6. 55. B.

But note in all these cases he ought to take upon
him the Cure absolutely, 19 *Hen. 6. 49. 48 Edw. 3.*
6. else the Action lies not.

The Writ.

The Writ ought to shew the place where he
took upon him the Cure, 48 *Edw. 3. 36.* for it is
issuable.

If A promise to cure me in London, and apply
unwholsom medicines in *Middlesex*, the Action
shall be in *Middlesex*, because there was the wrong,
11 *Rich. 2. Action upon the Case 37*, and where
the wrong is there must the trial be.

H 2

For

2. For delivering good and merchantable Corn, and doth not, 6 *Edw. 2. 6. Dyer 75. pl. 23. Lib. Intra. 4. B. sect. 2.* but special damage must be alledged.

+ *The Judgment.*

For not delivering of grain yearly, *quare* if the Plaintiff shall recover damage as well *pro tempore futuro quam pro præterito*, 3 *Maria, Dyer 113. pl. 56.*

+ Administratrix promises to pay a debt, &c. and the Action is brought against Baron and Feme, then the judgment against him shall be general, & *prædictus P. & M. uxor ejus in misericordia*, *Coke 9. part. 93. Banies case, No. Lib. Intra. 2. C. Sect. 3.*

But upon plea, that the Testator did not assume, costs and damages shall be *de bonis propriis*, if the Testator had not sufficient, *No. Lib. Intra. 1. B. sect. 1.* for the false plea.

The Writ.

Upon *assumpsit* by the Husband and Wife, made to the Wife *dum sola fuit*, the Writ shall say, *ad dampnum ipsorum*; for the Husband shall have the damages, *ideoque fuit ad dampnum ipsorum*, *Hill. 9 fac. Ban. Regis, Wolverton and his Wife against Day.*

For

For not doing a thing which ought to be done by Agreement touching the body.

1. Against a Barber that takes upon him to Barbet. raze the Beard, and doth it with an unwholsom Razor, *Lib. Intra. 2. C. sect. 1.* for the body is endangered to be hurt thereby. +

2. Against a Physician or Chirurgion for not Physician curing a malady, or not applying a medicine, 14 or Chirurgion. *Hen.6.18.43 Edw.3.33.21 Hen.6.55.48 Edw.3.6.pl.11. Regist. orig.105.B.112.A.*

3. For advising his patient to apply a certain medicine to cure him, and it did not, 19 *Hen.6.49.quare.* + *Pr. J.*

For commanding his Servant to apply a medicine, and he doth it not, 11 *Edw.4.6.Q.*

4. For applying a medicine that impairs the Mayheme, 11 *Rich. Action upon the Case 37. 11 Hen.6.18.pl.10.21 Hen.6.55.B.*

But note in all these cases he ought to take upon him the Cure absolutely, 19 *Hen.6.49.48 Edw.3.6.* else the Action lies not.

The Writ.

The Writ ought to shew the place where he took upon him the Cure, 48 *Edw.3.36.* for it is issuable.

If A promise to cure me in London, and apply unwholsom medicines in *Middlesex*, the Action shall be in *Middlesex*, because there was the wrong, 11 *Rich.2. Action upon the Case 37*, and where the wrong is there must the trial be.

H 2

For

Assumpsit. For not doing of a thing which ought to be done by agreement of the parties touching Snits in Law.

Clerk. Against a Clerk that promises to enroll a Deed, and doth it not, 34 Hen. 6. 4.

L. Serjeant.. Counsel-
lor. *X* Against a Serjeant or Counsellor that promises to plead for me, and doth it not, 14 Hen. 6. 18. if I retain him and give him his fee, else not.

For not doing of a thing where a man is bound to do it in one manner, and he doth it in another.

Plough my land. *X* Against him that promises to plough my land, and doth it in unseasonable time, 14 Hen. 6. 18. 3 Hen. 6. 36. for the Law implies he must do it for my best advantage.

Attorney. Against an Attorney that takes an obligation in his own name, when it should have been in mine, 20 Hen. 6. 25. *Q.* if an Action of Deceit do not lie.

Carpenter. Against a Carpenter that undertakes to build a house in such a form, and builds it in another, Nat. br. 145. G. 2 Hen. 4. 9. 21 Hen. 7. 41. 20 Hen. 6. 35. *Q.* if he build it in a better form, and more for the benefit of the Owner, and to his own loss.

Crannage. Against him that hath a Crane, and spoils my Merchandize, Lib. Intr. 3. C. *señ.* 1. this is misfeasance.

Farrier. *X* Against a Farrier that takes upon him to cure my Horse, and applies unwholsom Medicines, &c. 19 Hen. 6. 49. whereby my Horse is made worse.

For

For pricking my Horse, 46 *Edw.* 3. 2, 3. 10. *Nat. br.* 94. *D.* 18 *Edw.* 3 6. *pl.* 11. for it is the duty of an Artificer to do his office well and truly; and this is implied in Law upon his undertaking to use his art.

For misusing a License, 21 *Edw.* 4. 76. *quare* License: what.

Against a Serjeant at Law that is retained to plead, and mispleads, 14 *Hen.* 6. 18. for this is mistake, and to his Clients prejudice it may be, but if it be not *tunc quere*. To misplead is to plead otherwise than he is instructed by his Client.

For negligent suffering of a thing to be done to the damage of another.

A borrowed a Horse of me, which dies suddenly, Borrowed. an Action lies not, 40 *Edw.* 3. 6. for the borrower was in no fault.

But if the thing be used in other manner than it was lent to be used, and dies, an Action lies, *Doct. & Stud.* 29. for this is misusing of it, and contrary to the agreement.

But if it be but in the same manner that it was lent, and dies, no Action lies, *Doct. & Stud.* 29. for it was lent to be used, though not misused.

A borrowed a Horse, and a House fell upon him; there if the house fell upon him being feeble, Action lies, otherwise not, *Doct. & Stud.* 128. for he might have foreseen the danger, and prevented it.

Against him that keeps not well his fire, by which my house is burned, being adjoining, 2 *Hen.* 4. 18. 8 *Edw.* 4. 19. *pl.* 30. *Choke*; for we must

must so use our own that we hurt not another.

Although his own house be burned, 33 *Hen. 6. 1. Lib. Intr. 8. A. sect. 1.* for his own harm is no recompence to his Neighbour.

3. It lies although his Servant do it: but not if a stranger do it of malice, 33 *Hen. 6. 1. 2 Hen. 4. 18. Doct. & Stud. 137.* for the Master must be answerable for the actions of his Servants in civil matters, though not in criminal.

4. If a Servant bring fire in the street and burn a house, his Master is not chargeable; for when the Servant is out of his house he is not under his government.

5. It lies not if it be burned suddenly, and the cause not known, 42 *Affize 8. 2 Hen. 4. 18.* for the Law delights in certainties, and doth things upon just and sure grounds, and not upon probabilities and surmises.

Barr.

That it was not burnt in default of good custody of the fire of the Defendant, *Lib. Intra. 8. A. sect. 1.*

But by 28 *Hen. 6. 7.* this is but a negative pregnant; for he might have pleaded *non culp.* which the other plea doth but imply.

That he guarded his fire well, *absque hoc* that he guarded it negligently, *Lib. Intra. 8. B. sect. 2.* for here is a direct affirmative, and a traversing of Plaintiffs declaration.

Bailly.

Against a Bailly of Cloth, that suffers it to be consumed with Moths, 27 *Hen. 8. 25. 13 Hen. 7. 1. 18 Edw. 3. 23.* viz. by negligent keeping, which the Law implies he ought not to do.

Against

Against a Bailly of a horse that suffers him to perish, 12 *Edw.* 4. 13. 26 *Hen.* 8. *br. Action upon the Case* 103. *Lib. Intr.* 3. B. *sect.* 1. *Regist. orig.* 107. A. for the former reason.

For losing a Release, 34 *Hen.* 6. 4. for the Releasee may be prejudiced thereby.

So of a box, *Lib. Intra.* 9. A. *sect.* 1.

Against him that suffers his Dog to bite my Dog, sheep, 28 *Hen.* 8. *Dyer* 25. pl. 102. & fol. 29. pl. 195. 28 *Hen.* 6. 7. pl. 7. *Lib. Intr.* 616. B. *sect.* 1. *Regist. orig.* 110. B.

But then the Master ought to know that he would bite them, *ibidem*; for then he might have prevented it, and so is punishable for not doing it.

But *sciens* is not traversable; but may be given in evidence, *Coke* 44. *part.* 188. for if he did not know it he may plead Not guilty, and the Plaintiff must prove he knew it.

If the owner of the Dog brings him to the Master of the sheep to do justice upon him, it lies not, 7 *Edw.* 3. bar 290. *viz.* upon the first notice or knowledge of it, otherwise not.

The Plaintiff declares, that the Defendant was possessed of a Dog 8. *Octobris* 7. *Jac.* using to bite, &c. and that the Dog 12. *October* in the same year did bite his Lambs, &c. this is not good; for he ought to have shewn, that he continued his Dog at the time of the biting; for it shall not be presumed that he continued it without shewing it, *Pasch.* 9. *Jac. Ban. Regis, Louder versus Sound,* 21 *Edw.* 4. 22. 15 *Eliz.* *Dyer* 320. for the Law will not presume any one will do an unlawful act, except it be proved.

Assumpsit.

4. For suffering his Dog to bite my Servant, *Regist. orig. 111. A. per quod servitium amisit*, else not, as it seems.

5. For hurting of an Ox, *Regist. orig. 111. A.* whereby he loseth his work, or is hindred in his fattening.

6. For hurting of a Horse after warning given, *Regist. orig. 106. A.* for the Master ought to have kept him up.

Escape.

1. Against a Warden of the Fleet, that suffers one to escape that was taken upon a *Capias ad computandum*, 15 *Edw. 4. 19. Lib. Intra. 8. C. Sect. 1.* for thereby the Plaintiff is put to more trouble and charge, and is delayed in his Suit.

2. Against a Sheriff, that suffers one to escape that was taken upon a Statute Merchant, *Regist. orig. 98. B. Nat. br. 93. A.* the Writ there, upon the same reason.

Innkeeper.

Against an Inn-keeper, that suffers the goods of his guests to be stole, *Coke 4. part. 32. Calyes case, Nat. 94. B. Regist. orig. 104. A, 105. A. 22 Hen. 6. 21. 42 Affize 17.* for the Law of the Land binds him to keep them safe at his peril.

1. But note, 1. this ought to be a common Inne, and it shall be shewed in the Count, but not in the Writ, 11 *Hen. 4. 45. 22 Hen. 6. 21. pl. 38. Coke 8. part. 32. Calyes case, Dyer 206. pl. 9. 2 Hen. 4.* Not in the Writ, because that is more short, & *rem breviter enarrat*; but the Count ought to express things more fully.

2. It ought to be a Traveller that lodges there, otherwise the Action lies not, *Coke 8. part. 32. Calyes case*; for the Law looks upon an Inn only in

In:

in respect of Travellers, for in respect of others it is no more than a private house.

4. He shall declare of nothing but what was within his Inn; for if he bid the Inn-keeper put his Horse to pasture, or put him to pasture of his own accord, unless the Inn-keeper request him to do it, it lies not, *Coke 8. part. 32. A. Calyes case*; for he is an Inn-keeper in respect of his House, and not of his Land.

4. He ought safely to keep the goods within his Inn at his peril, 42 *Affize 17.* for it is no excuse that he delivered the Key to the Guest, 42 *Edw. 3. 11. pl. 13. 11 Hen. 4. 45. 22 Hen. 6. 38.* or that the Guest did not acquaint him with his goods, 42 *Edw. 3. 11.* except the Guest will not trust the Inn-keeper, but will have the Key. *Quere.*

Or that he knew not the Felons, 22 *Hen. 6. 38. A*; for he must keep them safe against all persons, except forin Enemies.

But if the Companion or Servant, or any other that the Guest desires to lie with him, rob him, the Inn-keeper shall not be accountable, *Coke 8. part. 33. A. Calyes case, 22 Hen. 6. 38. B. 22 Hen. 6. 22. A.* for that was his own fault to admit of such Company.

Or if he say his house is full, and the other says he will make a thift, and be robbed, 5 *Marie, Dyer 158. pl. 32.* for in such case he is not properly his Guest, nor takes any charge of him or his goods.

Or if he command him to put his goods in such a place, and he will not, but suffer them to lie in the open Court, 10 *Eliz. Dyer 266. pl. 9.* for if he

he cannot be Master to order his house as he desires, it is no reason he should be punished for the disorder committed in it.

And although the Writ is but *bona & catalla*, yet Evidences and all other Deeds are included: the Writ in this case shall be general, but the Count special, *Coke 8. part. 33. Calyes case*. Deeds and Evidences are *bona & catalla*, though not valuable to any person but the owner of them.

But an Inn-keeper shall not be accountable for wrong done to the person of his Guest, *Coke 8. part. 33. A, & B. Calyer case*; for this is a criminal matter, and hath no relation to him as an Inn-keeper.

Servant.

1. Against a Shepherd, that suffers my sheep to be drowned, 2 *Hen. 7. 11. pl. 9. Coke 5 part. 13. B. Salops case. 12 Edw. 3. 4. 13. Dyer 121. pl. 17.* by negligence.

2. Against a Ploughman that suffers my Corn to be spoiled, 7 *Hen. 4. 14.* by negligence, or ignorance, as it seems. 2.

Receipt in
Bargains.

*For Deceit in bargains and agreements with
Warranty.*


1. The Warranty of a thing sold is the cause of an Action in case of vendition, as well as of corruption, 19 *Hen. 6. 9.*

2. And the Warranty ought to be at the time of the sale, 15 *Hen. 7. 41, Nat. br. 98. L.* and not afterwards, 6 *Edw. 6. Dyer 75. pl. 28.* else not good.

3. It ought to be by the owner of the thing, and not by a Stranger; and upon the sale by the owner, and not by a Servant, 11 *Edw. 4. 6.* for

for Warranty relates immediately to him that warrants.

It is not material whether the price be paid or not, for debt lies for it, 9 *Hen.7.21.pl.2.*

Against the Seller of a Horse that is sick, and is warranted sound, *Nat. br. 94. C. 7 Rich. 2.42. Regist.orig.108.A. Lib. Intr. 9. B. scd.1.* for this is deceit. Horse. 

Or a lame Horse warranting sound, 31 *Hen. 6. 11. Statbam.*

A strained Horse it lies not, because the buyer hath the view, 13 *Hen.4.1.pl.4. Hankford. 2.* if he warrant him sound.

Against a Seller of Cloth, that warrants it well Cloth. fulled when it is raw, 11 *Hen.6.221.*

Against him that warrants it of such a length, and this upon sale and warranty of the Servant, it lies against the Master, 11 *Edw.4 6.* for it lies not against the Servant, *ibidem*, for the Cloth was the Masters.

Against him that sells grain, and warrants it to Grain. be good, *Lib.Intra.9.B. scd.1. Regist.orig.111.A.* whereas it is musty or corrupted.

Against him that warrants Herrings, *Regist.orig. Herring. 96.A.* in the number and the goodness.

Against him that sells a Sapphire instead of a Sapphire. Diamond, *Kitchin.174.*

Against a Seller of wood, and shews part, and Wood. warrants the rest to be good, 14 *Hen. 6. 22. pl.66.*

Against a Seller of corrupt Wine with warranty, *Nat.br. 94. C. 9 Hen.6.35. 7 Hen.4.14. pl.19.* that it is found and wholsom.

If

If the Servant sold it by covin of the Master, Action lies against the Master, 9 Hen.6.53. pl.37. for it is the Masters act.

For deceits in Bargains and Agreements, without Warranty.

Deceit in bargain.

1. Against him that sells a Horse not found, knowing him to be so without warranty, 20 Hen. 6.34. 13 Hen.4.2. *Kitchin* 174. 2. for it seems it lies not; yet if it doth, it is because the Law hates deceit in Contracts, for it hinders Commerce, which is beneficial to the Commonwealth.

Horse.

For selling an Horse to another that was not his own, 42 Assize 8. *Coke* 4. part. 18. B. for this is fraud.

Cloth.

For selling Cloth that is nought, knowing it to be so without warranty, 21 Hen.7.91. pl.16. *Crooke*.

Gum.

Against him that promises to deliver good Gum, and doth not, *Mich.7 Jac.Ban.Regis, Weston & Deighton*.

Wine.

Against him that sells Wine mixed with water, *Nat.br.88.F.* for this is but part Wine, and so the buyer hath not what he paid for.

Viſtual.

For uttering Corrupt viſtual, knowing it to be so, 19 Hen.6.53. 22 Hen.7.91. pl.16. *Crooke*. 11 *Edw.4.6.B. Brian & Neal*.

Wax.

Against him that sells good Wax and delivers ill, 6 *Edw.6. Dyer* 75. pl.18. 2. whether in all these cases an Indictment at the Common Law will not lie : It seems it will.



Trover and Conversion.

- In Decd.**
1. Delivery as to persons unknown, 33 Hen. 8. *Br. Action upon the Case* 109. Trover for a Hawk with bells reclaimed and sold, knowing it to be the Plaintiffs, 14 Eliz. Dyer 306. pl. 66. for he cannot recover it against the Vendee. *Q.* The Sale here makes the Conversion.
- Sold as to persons unknown, *Lib. Intra. 5. A. Sect. 1.*
- In Law.**
2. Wasting the goods, 34 Hen. 8. *br. Action upon the Case* 103. for this a Conversion in Law.
 3. Denial to re-deliver. *A* brought an Action for Plate and Jewels, and shews, that upon request the Defendant refused to deliver them, this is good evidence to a Jury; but to find it at large, viz. without a request, is not a sufficient Conversion to warrant the Action, *Coke 10. part. 46. B. Oxfords case, Hill. 12 Jac. Ban. Regis, Isack & Clarke, per 3 Justices, 33 Hen. 6. 27.* for the Count is in *usum suum proprium convertit & disposuit*; but a nude denial is not a Conversion, *Q. viz.* that he hath the goods.

Trover
*Quid &
Quotuplex.*

But

Money.

But if it be for money out of a bag, then it is a good Conversion, if he deny it, because it cannot be known, *Pasch. 14 Eliz. in Le chequer*, and so the Plaintiff cannot prove that it was his money which was denied.

Note, if the Plaintiff have not property in the things, it lies not, *20 Hen. 7. B. pl. 18. Q.* what property he must have.

Note.

1 *Pasch. 43 in Eliz. Bushopp's case* it was a doubt, if *A* takes goods to the use of *B*, and afterwards *B* agree to the taking; *quare*, if such Action lies against *B*, *quia A* divests the property by the taking, and not *B* by the consenting, as it seems.

2. The count ought to shew the place of conversion, *Mich. 26, 27 Eliz. Ban. Regis, Stranbams case*; because it is traversable and issuable.

So the day of the Conversion, *Hill. 7 Jac. Ban. Regis*; for the same reason, and without shewing that the Defendant knows not how to plead in bar.

If the count be of *Trover*, and the Jury find upon Bailment; yet good, for the Conversion is the point of action, *Hill. 12 Jac. Ban. Regis, Isack & Clark*, and not the *Trover*, for it is no fault to find a thing, for no property is gained by the bar finding, but by the Conversion.

Of what things it lies.

Money.

1. It lies for money out of a purse upon special matter, that he lost it and the other found it, *Trin. 43 Eliz. Com. Ban. Hall & Wood*; *Pasch. 24 Eliz.* in the Exchequer; but not generally, for money cannot be known, and so the Plaintiff can fix no property in himself.

2. The

2. The Master delivers Corn to the Servant to sell, and brings his action for the money and goods;
1. the possession of the Servant is the possession of the Master. 2. It lies of money, *Mich. 4. & 41 Eliz. Ban. Regis, Holliday & Higgs*; for the money comes in lieu of the Corn.

It lies for 20 Sheep, *Coke 5. part. 109. Foxleys Sheep. case.*

It lies for a Chain-door, found and sold, 3 *Chain-door. Maria, Dyer 121. pl. 14.*

It lies of a Horse.

Horse.

But it is no plea for the Defendant that a person unknown stole them, and left them, & *waiviavit*, without shewing the circumstances when and where, *Coke 5. part. Foxleys case 109. A.* but if he had said, *quidam ignotus waiviavit* them, without saying any more, this is good; for the circumstances shall be intended; for *waiviavit est vocabulum artis*, and implies all, *Mich. 15 Jac. Ban. Regis, Leader & Paschall.*

1. To traverse the sale is a good plea, 3 *Maria Dyer 121. pl. 16. viz. to say, he did not sell them.*

2. That he distrained them for a Rent charge *absque hoc*, that he converted them, this is nought; for it is no Conversion at all, *ideoque* it amounts but to the general issue, *non culp.* *Mich. 9 Jac. Ban. Regis, Davies & Knap.*

That he is a Horse-breaker, and the Plaintiff delivered it for him, &c. *Absque hoc, &c.* this amounts but to the general issue, *non culp.* *Mich. 9 Jac. Ban. Regis, Lovelace & Martyn, and not good.*

Husband

Deeds.

Husband and Wife shall have this Action for a Deed by which an Annuity was granted to the Wife; for the Wife should have it, if she survive the Husband, *Trin. 40 Eliz. Com. Ban. Russel & Catesby*; and the Husband is to have it during his life, viz. to make use of upon occasion.

†
Fruit
and Grain.

It lies for twenty Pooks of Corn, *Trin. 38 Eliz. Com. Ban. Price versus Sr. Walter Sands*.

It lies of four bushels of Wheat, *Trin. 12 Jac. Ban. Regis, Hill & Hawkes*.

The Defendant shews a prescription in the Bailly of L. to elect a Belman, which ought to repair the street of the Market-place, and to cleanse it, and that he shall have of every bushel there brought to sell, one pint of Wheat, &c. and justices, &c. this is good, because the custome is doubtful and may be put in issue, therefore a good bar; otherwise this plea would amount unto the general issues, *Trin. 12 Jac. Ban. Regis, Hill & Hawke*, and then it would not be good.

Jewels.

For delivering of Jewels, &c. in a Box to B, who dies, and they come to C, who breaks the Box and converts them, 20 *Hen. 7. 4. pl. 13*.

That he did not convert them to his own use is a good bar; for the Trover and breaking of the Box are but conveyances to the Conversion, 20 *Hen. 7. 4. pl. 13. per Fineux*, and not the ground of the Action.

Wool.

It lies of *Quinquaginta pondus* of Wool *ad valentiam*, &c. for *per Curiam pondus* shall be taken one pound weight, because this weight is more certainly known throughout all the Countrey, *Mich. 9 Jac. Ban. Regis, Roe & Lloyd; & loquendum est ut vulgus*.

It

It lies of a 100 load of wood, and 40 Beeches, Wood.
No. Lib. Intr. 41. B. scil. 33. Q. whether loads be +
 not incertain.

Of three Monkeys, and error brought because Monkey.
 that they did not say they were tame, *Mich. 9 Jac.*
 in Exchequer Chamber, *Shackley & Porter*, if
 tame. *Quere*, whether they are valuable and con-
 siderable in Law, being only Creatures of plea-
 sure.

It lies of forty measures of Pippins, *scil. Bu. Pippins.*
shels, Mich. 9 Jac. in Exchequer. Err. inter Clay-
don & Tayler. Q. for they are perishable things,
 and may be rotten before they can be recovered,
 and so not to be recovered in kind, yet damma-
 ges may be recovered, and so it may lie.

I

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129

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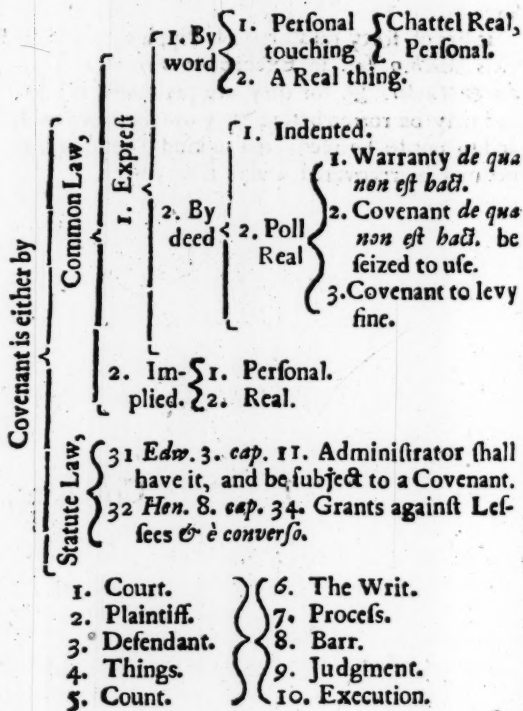
I

Covenant.



Covenant.

Conventio est quasi Transactio.



In

*In what Court Covenant lies, 1. Personal;
2. Real.*

1. **I**T lies in the County or Hundred Court, *Nat. br. 145. E.*

2. It lies in any Court of the Lord of a Mannor, *Nat. br. 145. E.*

3. In London, *Nat. br. 146. A.* and other Corporations.

1. *Marshalsey* between two of the Household of the King, *Coke 10. part. 74. A.* otherwise not.

2. In the Court of the Lord of a Mannor by special grant, *44 Edw. 3. 28. pl. 18. & fol. 37. pl. 30. Lib. Intr. 296. A. sect. 1. 50 Assize pl. 9.*

A Fine levied in the County Palatine of Lancaster, good, *37 Hen. 8. cap. 19.* which is in nature of a Covenant.

In *Banco Regis*, *36 Hen. 6. 34. A. Fortescue*, but it shall be avoided by Writ of Error. *Q.* except it be meant of a fine.

In Ancient demesne, *quare per 6 Edw. 3. 207. pl. 20.* it seems it should lie.

But *44 Edw. 3. 37. 50 Assize 9. Knivet*, it is not good. *Q.*

But *22 Hen. 7. 90. B. pl. 14. Crooke*, a fine may be levied in Ancient demesne, *per* petty Writ of Right close.

In *Eire*, good, *1 Edw. 3. 10. pl. 34. 8 Edw. 3. 27. 18 Edw. 3. 40. pl. 33.* that is, before Justices in *Eire* or *Itinerantes*.

In *Communi Banco*.

Before the Justices of the grand Sessions in *Wales*, *34 Hen. 8. cap. 26.*

Who shall have Covenant, 1. Personal; 2. Real.

If a man Covenant with another to enfeof him, or to serve him, &c. the other shall have covenant, although he do not agree, *Nat.br. 145. A.*

But then it ought to be by deed, *Regist. orig. 165. B. Nat. br. 145. A. & G. 7 Rich. 2. deeds 160.* which is an estoppel to say the other did not agree.

Yet in London a man shall have covenant to levy a fine without deed *per custome, Nat.br. 146. A. 22 Edw. 4. 2. pl. 6. Vavisor. 21 Hen. 6. 10. Covenant 11.*

Admini-
strator.

Administrator shall have Covenant by the equity of the *Stat. de 31 Edw. 3. cap. 11. Coke 9. part. 40. A. Henstoes case, made for Executors.*

But not before, *19 Edw. 3. Covenant 24.*

Assignee.

Assignee shall have Covenant, where it is made to one and his Assigns, *Nat.br. 145. C. Regist. orig. 165. B.* for the Assignee is in place of the Assignor.

Assignee.

Assignee shall have Covenant without shewing the deed of covenant, for he may not have it, *Trin. 36 Eliz. Banco Regis, Noke versus Ander.* But there, if the Lessee for years by estoppel grant over his term, the Assignee shall not have Covenant, because the Assignor had nothing in the land, but only an estoppel against the Lessor not to out him.

A, Prior with the assent of his Covert by deed, covenants for him and his successors with B and his heirs, that he and his Covert shall sing in the Chappel of B, which is parcel of the Mannor of B, for the Lords of the said Mannor.

The

The Assignee of B shall have covenant, because it is a service annexed to the Mannor, 42 *Edw.* 3. 3. *pl.* 14. *Coke* 5. *part.* 17. B. *Spencers* case, 45 *Edw.* 3. 3. 28 *Hen.* 8. *Dyer* 24. *pl.* 149. 2 *Hen.* 4. 6. *pl.* 25. and who so hath the Mannor, or is interested in the Covenant.

But if the service is to be made in the Chappel of another, then the Assignee shall not have covenant, because it is not annexed to the Mannor, 2 *Hen.* 4. 6. *pl.* 25.

And so if one covenant with a Tenant by the Courtlesie to sing in his house, although that he surrender and take for years he shall have Covenant, because it was annexed to his estate, 6 *Hen.* 4. 1. *pl.* 5. *viz.* for life. 2.

Assignee by word shall have covenant, *Coke* 3. *part.* 63. A. *Lincoln Colledges* case; for such an assignment is good.

Assignee of Assignee shall have covenant, *Coke* 5. *part.* 71. B. and so *in infinitum*, as it seems, so long as the estate assigned continues, if the Covenant go with the estate.

Assignee of one Coparcener shall have covenant against the other coparcener to acquit him of the suit, because the covenant goes with the land, *Coke* 5. *part.* 18. A. *Spencers* case, 42 *Edw.* 3. 3.

Lessor covenants to repair the house. Jett, the Assignee shall have covenant against him, because this is annexed to the estate: so the husband of the wife that is a Termor, and a Tenant *per Statute* Merchant staple, and every one that comes to the land *Coke* 5. *part.* 17. *Spencers* case, to which the Covenant is annexed.

So in all cases where it is annexed to the estate, *Nat. br.* 146. *C.* 48 *Edw.* 3. and not to the person otherwise than in relation to the Land.

Assignee of a reversion shall have covenant as well as the Lessor shall have it, *per* 32 *Hen.* 8. *cap.* 34. but this is when it concerns the things demised, and not collateral Covenants, *Coke* 5. *part.* 18. *A. Spencers case*; for in respect of Reversion of the thing lett, he comes in room of the Lessor in privity of estate.

Assignee of a Reversion for years when, the Tenant for years hath a greater Term, his Assignee shall have Covenant within, 32 *Hen.* 8. although the Lessor grant over his Term, *Trin.* 40 *Eliz. Ban. Regis*, *hot.* 123. *Natures versus Westwood. quere.*

Assignee shall have covenant, upon covenant in Law, *Coke* 4. *part.* 80. *B.* 9 *Eliz. Dyer* 257. *pl.* 13. where it goes with the estate.

Lessee covenants with the Lessor and his heirs to repair the house, the Assignee of the Lessor shall have covenant, *Mich.* 9 *Jac. Ban. Regis*, *Bestwicke & Wilborne*; for it goes with the house.

Husband
and Wife.

Lease for years to the Husband and Wife, the Lessor outs them, they may joyn in covenant, because after the death of the husband she shall have a term, if he grant it not over, 47 *Edw.* 3. 12. *pl.* 11. and so she hath a possibility of interest.

Corpora-
tion.

The Commonalty of D Covenants with the Major and Commonalty of L, that they shall be quit of Toll, &c. in D, and after one Burgeiss in D takes toll of one in L, Covenant lies for one Corporation against another, 48 *Edw.* 3. 17. *pl.* 2. It may be brought by the Major and Commonalty of

of one Corporation against the Major and Commonalty of the other Corporation.

Executor shall have Covenant for Covenant Executor. made to his Testator for a personal thing, for the personal estate is his to the use of the Testators will, *Nat.br.* 145. *D.* and *orig. Regist.* 165. *B.* Note, *de conventione pro executoribus non invenitur brevis in Registr. sed pro assignatis, tamen potest fieri pro executoribus tam bene quam pro assignatis, nam eadem est ratio de utrisque.*

A leases to *B* for life for 12 years, and *B* dies within the 12 years, the Executors of *B* shall have it until 12 years, &c. *B* dies, *A* outs the Executors within 12 years, they shall have Covenant, 19 *Edw.* 3. Covenant 24.

Executor of an Executor shall have Covenant by the Common Law, 19 *Edw.* 3. Covenant 24. *pol. Com.* 290. *Chapmans case, Lib. Inr.* 134. *B. sect.* 1. and so forwards, for the right dies not. Executor of an Executor.

The Heir shall have covenant, if the deed be made to him and his heirs, *Nat.br.* 145. *C.* 16 *Eliz. Dyer* 338. *pl.* 39. but this was to enfeof him and his heirs: so that this holds not generally, but where the heir is interested in the Covenant. Heir.

A enfeofs *B* in fee, rendring for 8 years one Rose, and afterwards 20 Roses, *B* dies, his heir within Age, the Lord recovers the Land by reason of Collusion, the Heir at full age shall have covenant, 18 *Edw.* 3. Covenant 7. in respect of his privity to the Covenant.

A covenants with *B* and *C* and their heirs, & *Joyn-tenant.* *eorum utriq;* to make an estate to the heir of him which first dies (being Parcener) the heir of one shall have covenant sole, 16 *Eliz. Dyer* 338. *pl. viz.* of him that first dies. I 4 When

When any of the Covenantees shall have several interests or estates, and the covenant is made with them & *cum quolibet eorum*, they shall have several covenants, otherways not, *Coke 5. part. 22. A, Matthewsons case*, in respect of their several interests.

Lessee.

Lessee for years by deed Poll is outed by the Lessor, he shall have covenant, *Nat. br. 145. L. 21 Edw. 4. 30. pl. 25.* for the lease implies a covenant to enjoy during the term.

But if a stranger outs him without title he shall not have Covenant, *Nat. br. 145. L. 22 Hen. 9. 52. pl. 26.* But if he had a colourable title and ousts him, *quere.*

Although it be by verdict, *Coke 4. part. 80. B. Nokes case*; for the verdict may not be according to Law. 2.

And although the Lessor warrant to him during the term, *26 Hen. 8. 3. pl. 11.* for the warranty is not so general: but if he warrant it against all men. 2.

But if a stranger that hath Title out him, then it lies, *Nat. br. 145. 32 Hen. 6. 32. pl. 27. Nedham*; for that proves he had no power to lett.

But Lessee for life shall not have Covenant upon such outing, for this cannot divests him of the Freehold, *26 Hen. 16. Covenant 10. Nat. br. 145. M.* if in the covenant it be not exprest.

But *13 Edw. 3. fines 165. per Shard*, if a lease be to *A* without impeachment of waste, and waste be brought against him, *A* shall have Covenant; for the lease implies a Covenant, that he shall not be sued for waste.

Tenant

Tenant for life shall not have the benefit of warranty, if he be not in possession, 26 Hen. 8. 3. pl. 11. viz. at the time of the warranty.

Lessee for years shall have Covenant upon a demise and grant, *Coke 4. part. 80. B. Nokes case, & 5. part. 17. A.* that is, if the lease runs, that Lessor doth demise and grant. *Q.*

If the land be evicted, *Pasch. 7 Jac. Bani Regis, Winchombe & Riggs.* A lease made to *A. per dedi & concessi*, the land is evict for years, *A* shall have Covenant against the lessor, for judgment was so entered, *Mich. 9 Jac.* But *Williams & Telverson* said, that it was without their privity; and *Williams* said, that is lied not: *quero ergo.*

Recusant shall not have an action of covenant Recusant. for any thing selsed into the Kings hands, *1 Jac. cap. 5.* by vertue of the Lessors recusancy; for the Common Law takes no notice of Recusancy.

Successor shall have covenant upon a covenant Successor. made and broken in the time of his predecessor, *4 Edw. 3. 130. pl. 71. quero* what Successor, or whether any kind of Successor.

A covenants to levy a fine, the party to whom Fine. this covenant is made shall have covenant, *Nat. br. 146. F.*

Against whom Covenant lies, 1. Personal; 2. Real.

Administrator is subject to it, *13 Edw. 3. cap. 11. Admini- Coke 9. part. 40. A. Fleasloes case*, upon a Cove- strator. nant made by the Intestate.

Assignee of a Termor shall be liable without Assignee. naming how the condition of the thing extends to

to the things in esse parcel of the demise, *Coke 5. part. 16. A. Spencers case; & fol. 24. Worcesters case.*

This extends to him that comes to the demise any way, *Coke 5. part. 17. B. Spencers case; viz. any legal way: but quere, if the Lessee be outed by one who hath no interest.*

So if the Covenant extends to a thing to be newly made, if it shall be made upon the demised land, the Assignee shall be bound by express Covenant to the Lessor and his Assigns, *Coke 5. part. 16. B. Spencers case, 25 Hen. 8. br. Covenant 32. Lessee covenants for him and his Assigns to repair a house; Covenant lies against the Lessee, and then against the Assignee also for the same breach, and no remedy but an Audita querela, per Brook. Q. 718.*

A leases for years to *B*, and covenants to suffer him to enjoy: there the Assignee of *A* of the Reversion is liable, though not named, *9 Eliz. Dyer 255. pl. 4.* for he comes in interest of estate in the room of *A*, who covenanted.

When the Covenant extends to a thing which had not essence at the time of the demise, the Assignee is not liable without naming him, *Coke 5. part. 16. B.* as where the Lessee Covenants to build a new house upon Land lett. *Q. rationem.*

When the demise is of a personal thing the Assignee is not liable by express name, *Coke 5. part. 16, 17.* because the Covenant goes to the person and not the estate.

If the demise be of Land and a personal thing, the Assignee is not bound by express name for the personality, for there can be no privity between the Lessor and Assignee, *Coke 5. part. 16, & 17.* but for the realty he shall be bound. The

The Statute of 32 Hen. 8. cap. 34. extends to Covenants, which touch the thing demised, and not to collateral Covenants which concern it not; for the Statute looks at the estate.

It lies against Executors, *Regist.orig.* 165.B.Nat. Executors. *br.* 145. H. and this is although they be not named, 28 Hen. 8. *Dyer* 14. *pl.* 69. 45 *Edw.* 3. 17. *pl.* 4. 47 *Edw.* 3. 22. 48 *Edw.* 3. 2. *pl.* 4. 9 *Eliz.* *Dyer* 255. *pl.* 4. for they represent the person of the Testator, and come in his stead.

But all the Executors ought to be named, 47 *Edw.* 3. 22. *pl.* 20. in the Writ and Declaration.

A Lease is made to A, the Lessor covenants to pay the quit Rents, &c. divers dues likewise; this is a personal thing, and binds not the Executor, 2 & 3 *Marie* 114. *pl.* 6. of the Lessor. 2. for it is paid *ratione terre*.

A Lease is made to the Husband and Wife, the *Feme.* Husband covenants to make assurance for the Rent; this binds not the wife, because it is collateral, 45 *Edw.* 3. 11. *pl.* 7. for the Lessor hath remedy for the Rent without such assurance.

But if they covenant, that they will not assign without his consent; there the Wife is bound, if the husband die, 18 Hen. 8. *Dyer* 13. *pl.* 66. *Shelley*; for else the Lessee is without remedy.

Heir shall be bound by covenant of his Ancestor, *Heir.* if be named, *Regist.orig.* 165.B. else not.

And although it be broken by his Ancestor, 4 *Edw.* 3. 130. *pl.* 71. as well as if broken by himself.

But not if he be not named, 28 Hen. 8. *Dyer* 14. *pl.* 69. 32 Hen. 6. 32. p. 27. for then the Law will intend only, that the Executor or Administrator shall be bound.

Infant

Covenant.

Infant cannot be bound by his Covenant to be an Apprentice per the Common Law, but by Custom of London he may, 21 Edw. 4. 6. pl. 17.

But then he shall be of the age of 14 years, 21 Hen. 6. 31. which are accounted years of discretion, to distinguish what may be for his benefit, and what not.

But an Infant of 12 years shall be bound by his Covenant to serve in husbandry, Nat. br. 168. D. 7 Hen. 4. 5. pl. 29. 9 Hen. 6. 10. pl. 28. 21 Hen. 6. 31. Newton. for husbandry is for the good of the Commonwealth, and the knowledge and maintenance of it are much favoured in Law.

But if he be within 12 years, he shall not be bound, 2 Hen. 4. 18. pl. 7. 29 Edw. 3. 27. pl. 29. 41 Edw. 3. 17. pl. 1. for under those years he is indeed incapable of learning the Art, by reason of disability of body and understanding also.

Lessee.

Lessee covenants to leave the house in good case, it lies not against him till the end of the Term, Nat. br. 145. K. 12 Edw. 2. Covenant 2.

But if he covenant sustentare & reparare, it lies presently, 45 Eliz. Dyer 324. pl. 34. and whenever it shall be out of repair, during the term.

So if he covenants to leave the Timber in good plight, this is void for the impossibility, Coke 5. part. 21. A. Mains case, 7 part. 15. A. Englefields case, Fitzherbert covenant 29. Nemo tenetur ad impossibile.

For if the Trees are thrown down by Tempest, it lies not, 40 Edw. 3. 6. A. Coke 1. part. 98. A. Shelleys case; for this could not be prevented.

But if the house be wasted by Enemies or Tempest, he ought to repair by reason of the Covenant,

or

Covenant.

141

or build it, 40 *Edw. 3. 6. A. Morin. Doct. & Stud.*
66. B. 29 *Hen. 8. Dyer 33. pl. 10.* if there be an
expres Covenant to do it.

Lessor is bound by expres Covenant or Cove- Lessor.
nants in Law.

It lies against a Lessor, if he outs his Termor,
Nat. br. 145. L. 21 Edw. 4. 30. pl. 25. Coke 9. pars.
80. A. 32 *Hen. 6. 32. pl. 27.* without cause, and
during the term.

A Parson leases his Glebe, and resigns during Parson.
the term, covenant lies against him, because it is
his own act and wrong, 12 *Hen. 4. 3.* and the Suc-
cessor may avoid the Lease. 92.

Where a Parcener upon partition covenants to Parcener:
sue a Writ of Partition, the other assigns his estate
to B, which covenants against the Covenantor and
good, *Coke 5. pars. 17. B. 42 Edw. 3. 3.*

If one become pledge for another to perform Pledge.
such a Covenant, the Action lies against the pledge,
Nat. br. 146. B. for he is in the place of the Prin-
cipal.

But then he ought to charge him as principal,
39 *Edw. 3. 9. pl. 14.*

Or shew that the Principal is not sufficient,
40 *Edw. 3. 5. Covenant 16.*

It lies against a Successor, *Lib. Instr. 136. B. Successor.*
Sell. 2. quare what, or whether against all.

It lies against him that should make a Deed, Deed.
Nat. br. 146. F. that covenants to do it, and does it
not.

For

*For what things Covenant lies, 1. Personal;
2. Real.*

Guardian
in Soc-
cage.

Guardian in Soccage grants the custody of the Ward to *A*, who covenants to render an Account to the Heir at full age, Covenant lieth for not doing of it, *Regist.orig. 165.B. Nat. br. 145. H.* for the Guardian. *Q.* whether an Account lies not for the heir.

Covenant lies against him that doth not according to his Covenant by deed, *Nat.br. 145.A.* that is, doth not perform the whole covenant.

But if it be not by deed, it lies not, *Regist.orig. 165.B. Nat.br. 145. A & G. 7 Rich. 2. deeds 160. Nat.br. 168.F. 14 Hen. 4. 26.* but an Action upon the Case upon the *Assumpsit*.

Unless it be in London by Custome, *Nat.br. 146. A. 22 Edw. 4. 2. pl. 6. Vavisor, 27 Hen. 6. 10. Covenant 11.*

Patent.

Doctor *Hector* had a Patent, that none should bring over *Spanish Wool* but himself, &c. he by his Indenture grants this to another, which by the same Indenture covenants to pay yearly 100 *l.* with this Proviso, that if he pay it not the Indenture to be void; yet covenant lies for the money that was due before the avoiding of the Indenture, *Mich. 9 Eliz. Ban. Regis, Dr. Hector's case.*

Mill.

A gives a Mill to *B*, &c. and that with a Proviso, *quod nec ego, nec heredes mei construemur molendinum, in, &c.* Covenant lies against the Heir, if he or his Father erect a Mill there, *4 Edw. 3. 130. pl. 71.* for the Heir is bound by his Father's covenant.

Termor.

A Termor deviseth the term by will to his wife during

during her Widowhood, the remainder to C, and dies, the Lessor sells the Fee to the wife, and covenants that he would discharge all former Titles, &c. she marries C in the mean time, Covenant lies against the Bargainor by the Baron and Feine, if C do oust them during the term; for it was his own folly to make such a Sale and Covenant. *Coke 10. part. 51. Lampets case.*

A leases to B for years, if C lives so long, and Lease. covenants that he had power to do it, C being dead at the time, Covenant lies, if A had not a good estate in it, *Coke 9. part. 60. Bradshaws case*, though C was dead; for if he had no good estate, he had no power to lett, and so his Covenant implied in Law is broken.

A leases to B for years Lands in which C had a Copyhold estate, and covenants that the Lessor shall suffer him quietly to hold the same, without trouble either of the Lessor or any other. B enters, C ousts him, Covenant lies not, because all the sequel depends upon this word [suffer,] the which extends only to the Lessor, and his Executors and Assigns, *9 Eliz. Dyer 255. pl. 4.* and not to the Copyholder, who hath a distinct interest from the Lessor.

A leases to B for years, and covenants, *quod pacifice gauderet, &c. sine interruptione alicujus*, Covenant lies, if any interrupt him, *16 Eliz. Dyer 328. pl. 8.* for the word *alicujus* is a general word, and includes all persons.

Lessor covenants, that the Lessee shall quietly and peaceably have, &c. without the disturbance or hindrance of the Lessor, the Lessor sues the Lessee in Chancery, and supposes that the Lease was only made to try a Title, an Action of covenant

Covenant lies not for such breach, *Trin. 11 Jac. Com. Ban. Rot. 384. Selby versus Shute*; for this was but a Lease in trust only for the benefit of the Lessor, and not of the Lessee.

Lessee.

Lessee by deed Poll shall have a Covenant against the Lessor, if he out him, *Nat. br. 145. L. 35 Hen. 8. Dyer 57. pl. 24. Shelley.* for the Action ariseth upon the covenant of the Lessor, which may be by deed Poll.

But not upon ousting by a stranger without Title, *Nat. br. 145. L. 22 Hen. 6. 52. pl. 26. Hill. 12 Jac. Com. Ban. Tisdale & Essex*; yet *quare*, if he had a colourable Title.

Although it be by Recovery, by Verdict, *Coke 4. part. 80. B. Nokes case. vid. antea.*

But if a Stranger hath Title, then it lies, *Nat. br. 145. L. 32 Hen. 6. 32. pl. 27. Nedham*; for then the Lessor could not lett.

But Tenant for life shall not have Covenant for such ousting, *Nat. br. 145. M. 26 Hen. 6. Covenant 10.* for ousting is intended of a term, and not of a Freehold, for such ousting is a disseisin.

If it be not exprest, *Nat. br. 145. M.* for that declares what ousting was meant by the parties.

Lessee for years shall have Covenant upon a demise and grant, *Coke 4. part. 80. B. Nokes case 5. part. A. Spencers case*; viz. upon the words demise and grant in the Lease, for they imply a Covenant.

Lease for years with warranty, the Lessee outed shall have Covenant, *26 Hen. 8. 3. pl. 13.* by all *9 Eliz. Dyer 257. pl. 13.* for the warranty implieth a Covenant for quiet enjoying.

Tenant

Tenant for anothers life leases for years with warranty, he for whose life the Lease was dies, the first Lessor enters, Covenant lies, 32 Hen. 6. 32. pl. 27. 9 Eliz. Dyer 257. pl. 13. against the Lessee for life upon his warranty, because his estate was but a contingent estate, and the warranty supposed absolute.

But if it be without warranty it lies not, 9 Eliz. Dyer 257. pl. 13. for he lets no greater estate than he hath.

A Covenants to serve B for years, and dies, no Action lies, *quia mors omnia solvit*, 48 Edw. 3. 2. B. pl. 4. Finchden.

Hill. 33 Eliz. Ban. Regis, Wilson & Mapes. A Parson leases his Rectory, and covenants to save harmless the Lessee, concerning the lands and profits for one year against Blunt, Blunt enters within the year; Covenant lies, because it is expressed against a certain person. *Quere*, if it had been generally.

Lessee covenants, that he will not assign his Term over, by which it may come to D; the Lessee assigns it to K *per Curiam*, Covenant lies, for he hath put the power out of him, Trin. 13 Jac. Com. Ban. Guines case, and it may come to D whether he will or no.

Of a Fine levied of Rent, a Writ of Covenant lies, 22 Edw. 4. 2. pl. 6.

The Count in Covenant, 1. Personal; 2. Real.

The Count was, that *per Indenturam suam testat. existit*, that the Defendant covenanted so and so, this is good; but such plea in bar is not good,

K

Mich.

Mich. 7 Jac. Ban. Regis, Wyrdnam versus Fankner, 2 Maria 117. pl. 78. but he must plead Covenants performed, and tender an issue.

Count.

Prior and Covent leases to two for years with warranty, *per Indenture*, rendring Rent; one dies after possession, the other survives, and was sole posselt, the Prior dies, the Defendant *fuit electus & praefectus Prior, & tali die expulsus & ejectus est*, the Survivor by the new Prior, and so the Defendant did not hold Covenant made between the late Prior and the said Survivor, *Lib. Intr. 135. D. sect. 2.* this is a good Count, for the Covenant lies by the Survivor against the Successor.

Count upon covenants to make a new Lease, *Com. 2. Chapmans case*, and good.

A leases to B for 6 years, if C live so long, and covenants that he had power to demise it, &c. B in covenant needs not count that C was in life, for if he were dead at the time of the demise, yet Covenant lies; 2. he need not shew that he had the better right, because he did pursue the words of the Covenant negative, *Coke 9. part. 60. Bradshaws case*, or else it cannot appear it is the Covenant upon which the Action is brought.

Count by the Lessor against the Lessee, that Covenants to pay all charges, and pays not the tenths granted *per Parliament, Lib. Intr. 136. C. sect. 4.* for the word Charges includes the Tenths, for they are charges issuing out of the Land, or payable *ratione terrae*.

The Count shall be general, that he hath broken covenants between them, to the damage, &c. the other shall say, that they are performed, the

the Plaintiff may reply, that they are not, because he shall have several dammages for every Covenant broken; but upon an Obligation he ought to shew in what he hath made a breach, because he shall have the forfeiture for one breach, 6 Hen. 4. 8. pl. 34. if but one breach:

Tenant for life leases for years rendring Rent, the Lessee covenants and is expelled by him in remainder, 1. he ought to count that he was possess'd; 2. he ought to shew the estate for life, and the remainder certain, 9 Eliz. Dyer 257. pl. 13. because it is a special ouster, and not by the Lessor; and for the first, if he were not in possession, he cannot be said to be ousted.

Writ in Covenant, 1. Personal; 2. Real.

In Comitat.

Rex, &c. justicies A. quod. teneat B. conventionem inter eos faciãti, de quibusdam defectibus, in Manerio ipsius B. de N. existentibus sumptibus ipsius A. competenter emendand. sicut, &c. ne amplius, &c. Regist. orig. 167. A. This is in the County Court, as it seems.

In Banco.

Rex, &c. præcipe A. de B. quod juste, &c. teneat W. conventionem, inter eos faciãam de viginti acris terre in K. frumento & alio blado competenti seminandi, & de bladit & terris prædicti. crescentibus metend. & ad domus ipsius W. sumptibus ejusdem A. in eadem villa cariandi, & nisi fecerit, &c. Regist. orig. 166. A. This in the Common Pleas.

R 2

The

The Writ shall be brought where the Covenant was made, *Nat.br. 146. E. 11 Rich. 2. viz.* in that County where it is a real Covenant.

But it is no plea to abate the Writ unless the Deed bears date in another County, *Nat.br. 146. E.* than where the Covenant is brought, and it may be a Covenant by parol.

The Writ for outing the Lessee shall be *de dampnis & de perditis occasione expulsiōis, &c.* *9 Eliz. Dyer 257. pl. 13.* for if he be not dampnified no Action lies.

The Writ ought to mention all the Executors which did administer, *47 Edw. 3. 22. pl. 20. 48 Edw. 3. 2. pl. 4.* where an Action of Covenant is brought against Executors; for all the Executors are but one Executor in Law, for they have a joyn't trust and interest.

The Process in Covenant, 1. Before appearance ;
2. After.

Covenant
 Personal.

1. By the Common Law the Process before appearance was but a distress infinite, *22 Hen. 6. 13. Br. exigend. 29. 48 Edw. 3. 29. pl. 15.* and no *Capias.*

2. After appearance the parties appear, and day is given over; (*salvis partibus, &c.*) the Defendant makes default at the day, a distress was awarded against him, *Lib. Intra. 134. B. Sect. 1.* and not a *Capias.*

Covenant
 Real.

Quia non fit breve de Attachiameto, quia oportet quod partes compareant personaliter in Curia, Regist. orig. 165. A. and here was day given over *salvis partibus*, which was no personal appearance.

The

The Bar in Covenant, 1. Personal; 2. Real.

1. When a certain duty accrues by the Cove-
nant at the time of the making of it, an Accord
with satisfaction is no plea, *Coke 6. part. 44. A. Blakes* case; for such an Accord cannot discharge
the duty. But a release may be pleaded in bar. Accord.

But where no certain duty accrues until the
subsequent act or wrong, there Accord with sa-
tisfaction is a good plea, *Coke 6. part. 44. A. Blakes*
case; for he may make satisfaction for the wrong
by the agreement of the Covenanttee.

Covenant to a Parson for the enjoying his
Benefice, and the Parson deserts, the Cure is void,
if he deny it after such desertion, *14 Eliz. cap. 11. Rastall, Leases 244. D. 23 Eliz. Dyer 372. pl. 11.*
This is after the Parson is absent forty days in the
year, and not otherwise; for that is a desertion in
Law whereby he may be deprived.

A covenants to gather the Rents in D, and he
pleads, that he was interrupted by the Plaintiff,
and so could not do it; this is a good bar, *Crooke*
13 Hen. 7. 34. pl. 2. for the Plaintiff shall not take
advantage of his own wrong. Distur-
bance.

Lessee covenants to surrender before the term
ends, and a Stranger that hath right enters upon
the Lessee, this is a discharge, because the Lessee
is disabled by an act in Law, *Hill. 41 Eliz. Com.*
Ban. Andrews versus Nedbam, 45 Edw. 3. 48.

Performance generally a good plea, *6 Hen. 4. 8.* Perform-
pl. 34. ance.

In a Covenant upon a demise by Indenture and
an eviction by a Stranger, by a higher Title, it is

no Bar to traverse the possession of the Plaintiff without particular cause, shewing how the other had title, because it is by Indenture, *Trin. 3 Jac. Ban. Regis, Stile versus Hearing*, which is a general estoppel without shewing of special matter to avoid it.

A covenants to make a good estate in Copyhold land to *B* before *Easter*, during the life of *Cox*; it is no plea to say, that it was surrendered to the Lord by his procurement to the use of *C*, if he shews not that he was admitted; for nothing vests in him to whose use it is till admittance, *Mich. 15 Jac. Ban. Regis, Stiles versus Smith*, and so the Lord was not disabled to perform the Covenant.

Release.

Release is no Bar before the Covenant is broken, *viz.* generally, *Coke 4. part. 71. Hors case, 5 Eliz. Dyer 217. pl. 2. Coke 1. part. 99. A. Shelleys case.*

If it be not by exprefs words, *Coke 5. part. 71. A. 35 Hen. 8. Dyer 57. pl. 24. Bramly*; for so the Covenant may be released.

Judgment in Covenant, 1. Personal; 2. Real.

Judgment against an Executor for a Covenant broken after the death of the Testator, is of the Testators goods, *15 Eliz. Dyer 324. pl. 34.* for he is in the Testators stead, and trusted with his estate.

If a Lessee recovers being outed by the Lessor, he shall recover his term, *viz.* the remainder unexpired, *Nat. br. 145. M. 47 Edw. 3. 24. pl. 61. 20 Edw. 3. Judgment 177. and also Damages, Nat. br. 145. M.*

Execution

Execution in Covenant, 1. Personal; 2. Real.

1. Per Common Law; 2. Per Statute Law.

By the Common Law it is but a *Levari facias*, Personal.
Lib. Intra. 133. D. sect. 2. & fieri facias, Lib. Intra.
138. A. sect. 1. extending but to goods and Chattels.

But no other Execution, *Coke 3. part. 12. A. Herberts case.*

And this only within the year; for if the year be past it was an ACTION of debt upon the Judgment, *Coke 3. 12. A.*

Unless the Process were continued, 33 *Hen. 6. 49. pl. 33.* for the continuance of it made it, as if no time were passed, but continued a present Judgment.

By the Stat. by *Westm. 2. cap. 45. a Scire facias* was given after the year, *Coke 3. part. 12. A.* to revive the Judgment, and so the party is not now forced to bring an ACTION of debt upon it.

And per *Westm. 2. cap. 18. Elegit* is given, *Coke 3. part. 12. A.* which extends to lands as well as goods.

By the Stat. of 23 *Hen. 8. cap. 14. Capias ad exigend. fuit* given in Process, and by consequence a *Cap. ad satisfaciend.* in execution against the person.

By the Common Law it was but a Writ *de fine* 2. Real. *falso*, or to pay a fine, as it seems, which was but a Writ of Covenant in its nature, 43 *Edw. 3. 12. B. Belknap. Glauvil. lib. 8. cap. 4. vide* the Writ there.

But entry was congeable to execute it, 8 *Edw. 3. 277. 24 Edw. 3. 40. pl. 49. Coke 7. part. 32.* and to hold till satisfaction made, as it seems.

If Land be tailed to one by fine, he shall have a Fine. Formedon in Remainder, 6 *Edw. 3. 185. pl. 9. Herle* to execute the Fine.

But when the King levies a fine, he ought to make Letters Patents to the Conusee to enter, *Coke 7. part. 32.* for the King passeth nothing but by Record.

A Fine levied of an Advowson, this may be executed by a *Quare Impedit*, 24 *Edw. 3. 69. pl. 78.*

But if an usurpation be, no *Scire facias* lies, 33 *Edw. 3. Quare Impedit 193. Knivet*, against the Usurper.

Fine levied of Services, there shall be a *per que servitia*, 29 *Edw. 3. 46. pl. 9.* to execute the Fine.

If a Fine be levied of Rent, there may be a Writ of Covenant, 22 *Edw. 4. 2. pl. 6.* to execute the Fine.

Tenant grants to do his services, there shall be but a Distress, 10 *Edw. 3. 371. pl. 3.* for that is the proper remedy to recover them, and there needed no Covenant. *Tamen quere.*

Fine levied of a Reversion, there shall be a *quid juris clamat* to execute this.

And if the Tenant alien, yet the Writ shall be against him, and his Assignee shall be bound by his Attornment, 8 *Hen. 6. 17. B. 18 Hen. 6. 3. B. pl. 2.* by the Judgment given against the Assignor and himself.

Conusor of a Fine dies, there shall be no *quid juris clamat* against him that claims; but if the Conusee only die, *quere* if his Heir shall have the Writ, 34 *Hen. 6. 7. B. Moyle*, against the party that hath the particular estate.

Fine levied before memory, there shall be no Execution, 1 *Edw.* 4. 6. *pl.* 13. for it shall be intended there was Execution formerly, or that there was to be none.

By *Westm.* 2. *cap.* 44. *Scire facias* is given after the year to revive the Fine, which is a Judgment in Law; but within the year such Execution as in other Judgments.

Detinue.



Detinue.

1. *Quid.*
2. *Quotum-plex.*

Detinue is either by	Common Law,	1. Upon Bailment.	1. To the Defendant himself.	1. Of Chattels Personal.	1. Alive.
			2. To another.		2. Dead.
		2. Upon a Deverunt.	1. General.	2. Of Deeds.	1. Certain, Chattels.
			2. Upon Trover.		2. In certain Bag. Box. Chest.
	Statute Law,				
		1. Sealed.			
		2. Unsealed Reals.			
		Westm. 2. cap. 2. Against a Sheriff and the Avowant.			
		27 Hen. 8. cap. 7. Against Forresters in Wales.			
		2 & 3 Maria, cap. 7. For the owner of a Horse stole and sold, not according to the Statute.			

- | | | |
|---------------|---|---------------------|
| 1. Court. | } | 7. The Process. |
| 2. Plaintiff. | | 8. The Garnishment. |
| 3. Defendant. | | 9. Enterpleader. |
| 4. Thing. | | 10. Barr. |
| 5. The Count. | | 11. Judgment. |
| 6. The Writ. | | 12. Execution. |

*In what Court Detinue lies, 1. of Chattels ;
2. of Deeds for Land.*

1. **I**T lies in the County Court *Nat. br. 138. B.* *In comi-
tatu.*
In any other Court, *Nat. br. 138. C.*

In the Common Bank, *Nat. br. 138. B.*

It lies not in the Marshalsey, *Coke 10. part. 76.*

A. 72. A. Marshalsey, *Q.* if both parties be of the Kings household, if it lie not.

2. In the County Court, *Nat. br. 138. B. Regist. orig. 159. B.*

It lies not in any Court without a Writ, and if it be sued so a Prohibition lies, *Nat. br. 138. C. Regist. orig. 159. B. viz. upon a plaint as is used in inferiour Courts.*

*Who shall have a Detinue, 1. of Chattels ;
2. of Deeds.*

An Avowant shall have a Detinue against a Avowant. *1*
Sheriff upon a return. *Habend.* where he returns *quod Averia elongata sunt, per Westm. 2. cap. 2. 9 Hen. 6. 42.* where they are not eloigned. *Q.*

But this shall not be until it be returned *quod plegii nihil habent nec sunt inventi*; for the pledges are liable to answer the distress, if the principle doth not prosecute or eloign.

Goods taken out of the possession of the wife, *Husband.*
a Feme sole, which marries and dies, the Husband shall not have a Detinue, unless his wife make him Executor, *38 Hen. 6 26. pl. 38.* for the Husband gained no property by the marriage, because the wife was out of possession at the time.

Executor shall have a Detinue for the goods of Executor.
the Testator.

Woman.

Ni:
Di:

A Woman shall have a detinue after divorce for the goods given in marriage with her, *Nat. br.* 139. *M.* 16 *Hen.* 8. 7. *pl.* 1. 28 *Hen.* 8. *Dyer* 13. *pl.* 61. for the divorce de vests the property out of the husband, which he only had by virtue of the Marriage.

But the 13 *Hen.* 3. *Prohibition* 21. the wife may sue for them in Court Christian. *2.*

A Woman shall have a Detinue for a *rationabile parte bonorum*, where the Custome gives such part, *Nat. br.* 122. *L.* for such Custome doth vest a property in her.

Heir.

The Heir shall have a Detinue upon Bailment to rebayl to him, *viz.* the Ancestor, and his Heirs, although it be but a Chattel, 15 *Edw.* 3. 159. *pl.* 24. for the Heir is privy in Law to the bailment, and is interested in the property.

H. x

Custome that the Heir shall have the principal goods of his Ancestor, he shall have a Detinue for them, 30 *Edw.* 3. 2. *pl.* 9. 39 *Edw.* 3. 6. *pl.* 24. against the Executor.

And so the Heir of a Copyholder shall have a Detinue for the Copy before his admittance, *Coke* 4. *part.* 22. *B.* 3. for he is intituled from his Ancestor.

Lessor.

A leases a house with implements to B for years, A shall have a Detinue for the implements at the end of the term, although they are wasted, 20 *Hen.* 6. 16. *pl.* 2. for by the Lease the property was not altered.

Proprietor

The Plaintiff in a Replegiare shall not have a Detinue for Cattel taken in *Witbernam*, 6 *Hen.* 7. 8. *B.* 2 *Hen.* 4. 9. *Br. Debt.* 51. for by the *Witbernam* he is de vested of the property.

Because

Because he that brings a Detinue ought to have property, 6 Hen. 7. 9. Nat. br. 138. 2 Hen. 4. 9. which here he hath not.

In a Repleg. the Avowant hath return irreplevisable; yet if the Plaintiff tender amends, he shall have a Detinue, Coke 8. part. 147. A. for it was but conditional, as the Law implies.

For he which returns Irreplevisable had not property in them, 10 Eliz. Dyer 280. pl. 14. but only to keep them till amends made.

Quere, if the Avowant after appearance claims property, he shall have a Detinue for the goods taken in *Withernam*, 11 Hen. 4. 10. pl. 21.

If a Horse be stole and sold in a Market overt, and be not tolled according to the Statute, 2 & 3 Maria, cap. 7. the Owner shall have Detinue by the same Statute; for by such sale the property is not altered, for it is no sale in Law, because the Statute is not pursued.

In *Wales*, if Cattel or goods be stole and sold in a Fair or Market, there the property is not altered, although tolled, therefore the Owner shall have a Detinue, 34 Hen. 8. cap. 26. *Nota & quere rationem*.

The King shall have Detinue for Cattel of an King. Outlawed person, 4 Hen. 7. 17. pl. 3. *bre. Outlawry* 41. against him that distrains them; for the property is vested in the King by the Outlawry before seisure.

The Lord shall have a Detinue for a Heriot Lord. custome, if it be taken before seisure, because he had the property before seisure, 13 Edm. 3. Br. Heriot, Trin. 9 Jac. Ban. Regis Cresser case, per Curiam in a Prohibition, vide 10 Hen. 4. 4 Hen. 6. But

Woman.

Ni.
Di.

A Woman shall have a detinue after divorce for the goods given in marriage with her, *Nat. br.* 139. *M.* 16 *Hen.* 8. 7. *pl.* 1. 28 *Hen.* 8. *Dyer* 13. *pl.* 61. for the divorce deverts the property out of the husband, which he only had by virtue of the Marriage.

But the 13 *Hen.* 3. *Prohibition* 21. the wife may sue for them in Court Christian. *L.*

A Woman shall have a Detinue for a *rationabile parte bonorum*, where the Custome gives such part, *Nat. br.* 122. *L.* for such Custome doth vest a property in her.

Heir.

The Heir shall have a Detinue upon Bailment to rebayl to him, *viz.* the Ancestor, and his Heirs, although it be but a Chattel, 15 *Edw.* 3. 159. *pl.* 24. for the Heir is privy in Law to the bailment, and is interested in the property.

H. X.

Custome that the Heir shall have the principal goods of his Ancestor, he shall have a Detinue for them, 30 *Edw.* 3. 2. *pl.* 9. 39 *Edw.* 3. 6. *pl.* 24. against the Executor.

And so the Heir of a Copyholder shall have a Detinue for the Copy before his admittance, *Coke* 4. *part.* 22. *B.* 3. for he is intituled from his Ancestor.

Lessor.

A leases a house with implements to *B* for years, *A* shall have a Detinue for the implements at the end of the term, although they are wasted, 20 *Hen.* 6. 16. *pl.* 2. for by the Lease the property was not altered.

Proprietor

The Plaintiff in a Replegiare shall not have a Detinue for Cattell taken in *Witbernham*, 6 *Hen.* 7. 8. *B.* 2 *Hen.* 4. 9. *Br. Debt.* 51. for by the *Witbernham* he is devested of the property.

Because

Because he that brings a Detinue ought to have property, 6 Hen. 7. 9. Nat. br. 138. 2 Hen. 4. 9. which here he hath not.

In a Repleg. the Avowant hath return irreplevisable; yet if the Plaintiff tender amends, he shall have a Detinue, Coke 8. part. 147. A. for it was but conditional, as the Law implies.

For he which returns Irreplevisable had not property in them, 10 Eliz. Dyer 280. pl. 14. but only to keep them till amends made.

Quere, if the Avowant after appearance claims property, he shall have a Detinue for the goods taken in *Withernam*, 11 Hen. 4. 10. pl. 21.

If a Horse be stole and sold in a Market overt, and be not tolled according to the Statute, 2 & 3 Marie, cap. 7. the Owner shall have Detinue by the same Statute; for by such sale the property is not altered, for it is no sale in Law, because the Statute is not pursued.

In *Wales*, if Cattel or goods be stole and sold in a Fair or Market, there the property is not altered, although tolled, therefore the Owner shall have a Detinue, 34 Hen. 8. cap. 26. *Nota & quere rationem*.

The King shall have Detinue for Cattel of an King-
Outlawed person, 4 Hen. 7. 17. pl. 3. *bre. Outlawry* 41. against him that distrains them; for the property is vested in the King by the Outlawry before seifure.

The Lord shall have a Detinue for a Heriot Lord.
custome, if it be taken before seifure, because he had the property before seifure, 13 Edm. 3. Br. Heriot, Trin. 9 Jac. Ban. Regis Cresser case, per Curiam in a Prohibition, vide 10 Hen. 4. 4 Hen. 6.

But

But the 14 *Edw. 3. Bar 277. (Wilby)* a man shall not have an Action for a *Harriot. Q. ergo*, not a Detinue.

Ufe. If a thing be delivered to *A* to deliver to *B*, yet *B* shall have a Detinue, 18 *Hen. 6.9. A. Newton*; for the property is adjudged in *B*, because it was delivered to *A* for his benefit only.

Husband and wife. Husband and wife may joyn in Detinue for a deed of Lands, 38 *Hen. 6.25. Lib. Intr. 209. D. scil. 3. & fol. 217. A. scil. 2. viz.* concerning Lands of the wife.

But this is when the Defendant comes not to the Deed by bailment, for if the Husband bail them he shall have it alone, *ibidem. 8 Edw. 4. 15. 38 Hen. 6. 25. A.* for the privity lies betwixt the Bailor and the Bailee.

Vide tamen, Lib. Intra. 217. A. scil. 2.

If Bailment be before coverture they ought to joyn, 21 *Hen. 7. 29.* for conformity: But upon bailment during the Coverture the Husband sole shall have a Detinue, 8 *Edw. 4. 16.* for that is adjudged his bailment only.

Donor. The Donor in tail shall have a Detinue for the Indenture after the death of the Donee without Issue, *Nat. br. 138. F.* in respect of his reversion, which depends upon the deed.

Estranger. An Estranger shall not have a Detinue for deeds unless he makes title to the Land, but upon request to deliver them, and a refusal, he shall have an Action upon the Case, 33 *Hen. 6. 26. pt. 12. Prifot*, if the Deeds do concern him.

Feoffee. If one have Deeds and some concern warranty, some not, and enfeoff *B* with warranty, *B* shall not have a Detinue for the deeds, which serve

to deraigne the warranty *per amount*, *Coke 1. part. 2. Buckhurfts case*, 44 *Edw. 3. 11. B.* because they do not wholly concern him.

Neither is it material for to maintain the title, *Coke 1. part. 1. Buckhurfts case*. But they shall have them which concern the possession only, *ibidem. viz.* of the Land; and the Feoffor is to have the Deeds to maintain his warranty.

But if a Feoffment be made without warranty the Feoffee shall have a Detinue for all, *Coke 1. part. 1. Buckhurfts case; viz.* all the Deeds that do any ways concern the title, that he may be able to defend it.

Unless it be *per dedi*, then it is expresse warranty during the life of the Feoffor, *per statutum de Bigamis, cap. 6. Coke 1. part. Buckhurfts case 1.* for the word Deed implies so much.

But note, that in all these Cases the Feoffee shall have Detinue for them against a Stranger, that cannot intitle himself by the Feoffor, *Nat. br. 138. G. Coke 1. part. 2. A. 7 Edw. 4. 26.* because a Stranger cannot pretend any colour.

And note, if the thing which lies in grant, as a Lordship, Rent, Advowson, &c. be granted to A with warranty, which grants it to B with warranty, B shall have a Detinue for the Ancient deed; because he cannot make a title without the Ancient deed, *Coke 1. part. 1. B. Buckhurfts case. quere.*

So in all other Cases the Feoffee shall have a Detinue for every deed which concerns the making of his estate good, *Nat. br. 138. K.* for the Law favours Titles to Land, and loves the maintenance of them.

Note,

Note.

Note, if *A* bail deeds of Land to *B* to re-bail them to him and his Heirs, and afterwards enfeoff *C* in fee; yet *C* shall not have a Detinue against *B*, for it is a charge to *A*, per cause of Bailment, *Crooke* 18 Hen. 7. 48. pl. 3.

Feoffor.

If one enfeoff another with warranty, the Feoffor shall have the ancient deeds, which contain the warranty, or which are material for the maintenance of the Title, *Coke* 1. part. 1. B. *Buckhurst's* case.

If *A* grant a thing that lies in grant to *B* with warranty, *B* shall have a Detinue for the Ancient deed, because this makes his title, *Coke* 1. part. 1. B.

A enfeoffs *B* per *dedi*. *A* shall have the Ancient deed, which comprehends the warranty, because *dedi* makes an expresse warranty, *Coke* 1. part. 2. B. and therefore it is good reason he should have the deed to make out the warranty by.

A makes a deed of Feoffment, and delivers this upon condition, if the Condition be not performed he shall have a Detinue, 37 Hen. 6. 37. B. for the deed for the property was not absolute out of him.

Heir general.

The Heir general shall have the Ancient deeds comprehending warranty, or necessary for the maintenance of the title, where the Feoffor obliges him and his heirs to warranty; for he is bound by his Father's act, and its reason he should have the deed to maintain it, *Coke* part. 1. B. *Buckhurst's* case, *Nat. br.* 138. L.

Feoffment per *dedi* the heir of the Feoffee shall not have the Ancient deeds, because he is not bound to warranty, *Coke* 1. part. 2. B. *Buckhurst's* case; but the heir of the Feoffor. 2

The

The heir of the disseisee shall have a Detinue for the deeds, *Nat. br. 138. L.* for he is in by deceit, and the Law will judge his title good till it be evicted.

The Heir in tail shall have a Detinue against the Discontinuee for the deed of entail, *Nat. br. 138. Heir special.*
H. 9 Edw. 4. 52. pl. 15. for it belongs to him to make ~~At~~ his Title by virtue of the entail.

Although there be a warranty to the Feoffee by his Father, *9 Hen. 6. 15. pl. 5. 4 Hen. 7. 10. pl. 4.* for the heir in tail comes in paramount the Father.

One Joytenant sole delivers the deed to re- Joynte-deliver to him, he alone shall have a Detinue *per* ^{nant.}
cause of this special Bailment, *13 Rich. 2. bre. 648.*
though the deed doth belong unto both; for the bailment is the cause of the Action.

A enfeoffs B and C, and the heirs of B, and Joynt-
delivers all the deeds to B, which dies; C shall ^{nant survivor.}
have a Detinue for the deed of Feoffment, but not for the other deeds, *34 Hen. 6. 1. A. Coke 1. part. 2. A. Nat. br. 138. F. viz.* which concern the Inheritance; but the deed of Feoffment concerns the estate for life, as well as the Inheritance.

If A makes a Release to B and C, and this delivers to B, which dies, C shall not have it, *ibidem.* for the Parchment and the Wax do belong to him to whom it was delivered.

But if A and B Joyntenants *per* defeasible title, and S. J. makes a Release to them, the Survivor shall have it, *34 Hen. 6. 1. per the Report Coke 1. part. 2. A.* for this concerns the Land, and shall survive with the estate.

Feoffment to two in Fee, the survivor shall have

L

all

all the deeds, *Coke 1. part. 2. B. Buckbursts case*; because the estate survives which the deeds concern.

If deeds concern more Lands, if the Tenant of any part happen upon the deed, he may detain it, because he hath an interest, *4 Hen. 7. 10. pl. 4. 2 Eliz. Dyer 183. pl. 57.* and it is reason he should have the deeds to maintain it as wt. for any other.

Recusant.

Recusant shall not have an Action for any thing seised into the hands of the King, *3 Jac. cap. 5. By Stat. vid.*

Remainder.

22 Hen. 6. 1. A Tenant for life dies, he in the Remainder shall have Detinue for the deed, *9 Hen. 6. 54. pl. 39.* for now his title is come in possession, and so the deed that created it belongs to him.

But if the Donor release to the Tenant for life, he in the Remainder shall not have a Detinue, *9 Hen. 5. 54. pl. 39. 2.*

If Tenant for life die, he in the Remainder of a Copyhold shall have it, *Coke 4. part. 22. B.* for Copyholds are in many things governed by the rules of the Common Law, and so no difference betwixt them and other estates.

Land is given to *A* for the life of *B*, the Remainder to *C* in Fee, *B* dies, *C* shall have a Detinue against *A* without request; because he had interest in the deed during the life of *B*, *33 Hen. 6. 30. B. 35 Hen. 6. 9. A. Moyle*, in respect of his Remainder.

But there *quere*, whether it lies against the Husband, when the wife is dead without issue, without request and possession, because he is a Stranger to the estate.

Ter-

Tertenant shall have a Detinue for the deeds, *Tertenant:*
Coke 1. part. 2. A. which concern the Lands in his
 possession.

The Lord by Escheat shall have a Detinue, *Lord:*
Coke 1. part. 2. A. 10 Edw. 4. 14. 6. Moyle, for the
 deeds which concern the Land escheated.

Against whom Detinue lies, 1. Of Chattels ;
2. Of Deeds.

Detinue lies against an Abbot and his Com- *Abbott:*
 moigne for a thing delivered to his Commolgue
 to re-deliver, *3 Edw. 3. 83. pt. 32.* a thing delivered
 to them.

An Administrator sold a thing, the Executor *Admini-*
 proves the Will, he shall have a Detinue against *strator.*
 the Vendee of the Administrator, *Com. 275. Foxes*
case; for now the Administrators title and pro-
 perty is destroyed, and the sale accounted void
 irreplevisable, that is, that the Cattel or Goods
 ought not by Law to be replevied again.

Avowant returns irreplevisable, the other ten- *Avowant:*
 ders amends, and upon refusal shall have a De-
 tinue, *Coke 8. part. 147. A.* for the property is in
 him, *10 Eliz. Dyer 280. pl. 14.* notwithstanding
 the distress; for the distress did but put them in-
 to the custody of the Law, and altered not the
 property.

Goods delivered to A to keep, and they are *Bailly of*
 stole, yet Detinue lies against him, *Coke 4. part. 83:* *goods.*
B. Southcoats case; for he ought to have kept them
 at his peril, and he shall have his remedy against
 the Thief.

But if he take them to keep, as he would keep
 L 2 his

his own, and they are stole, Detinue lies not, *Coke* 4. *part.* 83. for here he warrants not the safe keeping of them, for he cannot warrant his own from stealing.

Goods delivered to *B* to deliver to *C*, yet *C* shall have a Detinue against *B*; 18 *Hen.* 6. 9. *A. Nat. br.* 138. *A.* for the delivery of them to be delivered to *B*, vests the property of them in *B*, and not in *C*.

Husband
and wife.

It lies not against husband and wife, supposing they detain, 38 *Edw.* 3. 1. *pl.* 1. 13 *Rich.* 2. *Breve* 644. for the wife cannot detain, but it is the detainer of the Husband.

But of bailment to the Wife, *dum sola fuit*, and that the Husband did detain, 43 *Edw.* 3. 18. *pl.* 1. *Lib. Intra.* 219. *D. sect.* 4. it lies.

Carrier.

A Carrier loseth *B*'s goods, or they are stole from him, yet Detinue lies against him, *Coke* 4. *part.* 84. *A.* 2 *Hen.* 7. 11. *B. Townsend*; for the property was in the owner, and the Law chargeth the Carrier with them.

Executor.

It lies against an Executor, but he shall not be charged but for his Detainer, 39 *Edw.* 3. 5. *pl.* 21. in his own time, and not for the Testators Detainer.

Crooke 118. *pl.* 62. *A* bails goods to *B*, which dies; in Detinue against the Executors the question was, whether they shall be named Executors or not, and it seemed they needed not, for the Detainer is the point of Action. *Quere tamen*, for they detain by virtue of their Executorship.

For *Hill.* 12 *Jac. Ban. Regis*, *Isack & Clark*, 13 *Hen.* 4 12. *pl.* 2. 11 *Hen.* 4 45. *pl.* 20. 2 *Hen.* 5. 6.

5.6. *pl. 29.* 21 *Hen. 6. pl. 1.* one shall not answer without the other, therefore they are charged for the Detainer only. *Quere tamen*, for although they make but one person, yet this proves not but that they detain as Executors, and are so to be charged, as it seems.

It lies against an Executor upon a *rationabile parte bonorum*, 17 *Edw. 3. 9. pl. 29.* brought by the Feme of the Testator.

An Executor shall have a Detinue for goods in the possession of the Executor of his Joynt-executor, if the said Joynt-executor will pay a debt to the value. 3 *Eliz. Dyer 187. pl. 6.* for the Executorship survives.

It lies against a Stranger when they come to Estranger. the possession of two, 4 *Edw. 4. 9. pl. 11. Nat. br. 138. E. Q.*

Lessor shall have a Detinue for implements Lessee. leased with the house, at the end of the term, against the Lessee, although they are wasted, 20 *Hen. 6. 16. pl. 2.* for the property of them was not divested out of the Lessor by the lease.

Against him that finds goods, if they be wasted Trover of per wilful negligence; otherways if it be by casual means, *Duct. & Stnd. 129. B.* or a Trover lies, for that he could not prevent.

If a Horse be stole and sold in a market, but not Vendee. according to the Statute, the Owner shall have a Detinue, per 3 *Maria cap. 7.* for the sale is void, and so the property is not altered.

Administrator sold a thing, the Executor proves the Will, he shall have a Detinue against the Vendee of the Administrator, *Com. 275. Foxes case.* See the reason before, that the sale is made void.

Sheriff.

It lies against a Sheriff, where he returns upon a *returna habenda quod averia elongata sunt*, per *Westm. 2. cap. 2. 9 Hen. 6. 42.* See before the reason.

Husband.

A Wife Tenant in tail dies before issues, *quare*, if a Detinue lies against the Husband without request, 33 *Hen. 6. 30. B.*

A Feme sues goods *dum sola fuit*, and takes a Husband, Detinue lies against the husband and wife, *Lib. Intr. 209. D. Sec. 4. 43 Edw. 3. 18. pl. 1.* for now the goods are come into possession of the husband by the marriage, and so they are both to be sued; for the cause of Action begun whilst the Feme was sole, and it is continued in the husband by the intermarriage and detainer since.

Feoffor.

If A. enfeoff B. with warranty, B. shall have a Detinue against A. for deeds that comprehend warranty, or are material for the Title, *Coke 1. part. 2.* because the warranty is for his benefit.

If A. enfeoff B. without warranty, B. shall have it against A. for all the deeds concerning the land, the Feoffor needs not any deeds to make out the warranty.

And if the thing lies in grant, then it lies against the Feoffor, for all *Coke 1. part. 1. Buckbursts case*; for there is no warranty for him to make out, as it seems.

And so in any case for a deed that makes his estate good, *Nat. br. 138. K.* for it is reason to let him have weapons requisite for his necessary defence.

Against a Lessee for life.

A Lease made to A. for the life of B. remainder over to C. B. dies, C. shall have a Detinue against A. without request, because C. had interest in

in it before, 33 *Hen.* 6. 30. B. and he knows that by the death of B. his estate is determined; *sed quare*, if A. do not know B. is dead.

For what things Detinue lies, 1. Of Chattels;
2. Of Deeds.

Detinue ought to be of a thing certain, *Nat. br.* Certain. 138. A. because the very thing detained is to be recovered.

A Detinue lies for money in a Bag, or Box, or Coffer, *Nat. br.* 138. A. for that may be certainly known.

And this although the Seal be broken, 21 *Edw.* 4. 30. *pl.* 25. *Littleton*, so that the bale be not broken.

But otherwise it lies not, *Nat. br.* 138. A. 22 *Hen.* 8. *Dyer* 22. *pl.* 137. for then the money cannot be known.

Note, a Detinue was brought for one piece of Dornex of the value of 22 s. and tried at Gloucester Assizes, 5 *Martii* 15 *Jac.* 2. what Judgment.

Vide tamen 21 *Hen.* 7. 82. *pl.* 3. Detinue brought of a piece of silver. *Quere* what piece.

It lies of *Rationabile parte bonorum*, 17 *Edw.* 3. 9. *pl.* 29. by custome. See before. *Rationabile parte bonorum.*

Custome, that the Heir shall have the principal goods, Detinue lies for them, 30 *Edw.* 3. 2. *pl.* 9. 39 *Edw.* 3. 6. *pl.* 24. & *fol.* 9. *pl.* 15. See before. Heir.

Land leased with implements, at the end of the Impleterm Detinue lies for them, although wasted, 20 *Hen.* 6. 16. *pl.* 2. See before. Implements.

Goods lost If goods are lost Detinue lies, *Nat. br.* 138. E. against him that finds them, or a Trover.

Goods bailed. Goods bailed to deliver over, Detinue lies, *Nat. br.* 138. A. 18 *Hen.* 6. 9. A. against the bailee, by the party to whom they should have been bailed over. See before.

A. bails goods to B. which are stole, Detinue lies against B. for them, *Coke* 4 *part.* 84. *Southcott* case. *Vid. antea.*

But if he receive them to keep, as he doth his own goods, and they are stole, it lies not, *Coke* 4. *part.* 83. *Southcott* case, 9 *Edw.* 4. 40. *pl.* 22. *Danby. Antea.*

Carrier loseth goods. Carrier loseth goods, or is robbed, yet Detinue lies against him, *Coke* 4 *part.* 84. 2 *Hen.* 7. 11. B. *Townsend. Antea.*

Corn. A. contracts for Corn to be delivered at a day to come, he shall have a Detinue at the day for this, *No. Lib. Intra.* 169. B. *sect.* 1. for by the contract he had a property in the Corn,

Divorce. After divorce it lies for goods given in marriage, *Nat. br.* 139. A. 26 *Hen.* 8. 7. *pl.* 1. 28 *Hen.* 8. *Dyer* 13. *pl.* 61. *Vid. antea.*

It lies of a Horse, Cow, &c. or more Cows or Horses, *Nat. br.* 138. A. be the number what it will.

Replevin. It lies for the Plaintiff in Replevin, for goods taken in *Withernam*, because he from whom they were so taken had not the property in them, 2 *Hen.* 4. *br. debt* 51. 6 *Hen.* 7. 8. B.

Quere, if the Avowant shall have a Detinue for his goods taken in *Withernam* after appearance and claim of the property, 11 *Hen.* 4. 10. *pl.* 21. for the claim makes not the property.

The

The Plaintiff in a Replegiare after return irreplevisable upon tender of amends shall have a Detinue for the goods, *Coke 8. part. 147. A.* for he had the property in them, *10 Eliz. Dyer 280. pl. 14.* notwithstanding such Writ. *Vid. antea.*

A delivered B Corn and Wine, &c. and they perish, yet Detinue lies for them, *Doct. & Stud. 129. A. Q.* what shall be recovered, dammages *ut videtur.*

Corn.
Wine.

But if it be a thing that be to be redelivered, as a Horse, &c. if it be used in other manner than was agreed, and if it perish in default of the party to whom it was delivered, an Action lies, *Doct. & Stud. 129. A. Vid. antea.*

But if it be used but in such manner as it was agreed, and it perish, but not by default of the party to whom it was delivered, Action lies not, *Doct. & Stud. 129. A. Vid. antea.*

Note, *in brevi de chartis reddendis semper debet poni certus numerus chartarum vel scriptorum, Regist. orig. 159. B. Nat. br. 138. B. Et sic (ut videtur) est de aliis bonis & catallis.*

The Count in Detinue, 1. Of Chattels;
2. Of Deeds.

The Count ought to name all things certain, and the value, *1 Rich. 3. 20. A. 3 Hen. 6. viz. time and place.*

The Count was, that such a year day and place A tailed to B *bona & catalla, &c. scilicet, one Cup of Silver, &c. ad valentiam, &c. salvo custodiend. & eidem querenti cum inde requisitus fuisset redeliberand. &c. Lib. Intr. 212. B.*

Bailment.

A counts

Spoons.

A counts de bailment of Spoons, &c. *ad valentiam*, &c. *Lib. Intr. 211. D. sect. 2.* naming the number.

Devenerunt
Ag. Executors.

The Count was, *quod cum ipse*, the year, day and place, *deliberasset W. in vita sua, catalla, &c. posteaque predictus W. obiit, &c. & post ejus mortem predictam, &c. devenerunt* such a day, year and place, to the hands of the aforelaid Executors, *predictus W. nec predicti Executores, &c. Lib. Intra. 212. G. Sect. 4.* This against an Executor.

Per Executor.

Count per Executor, *Com. 275. A. Foxes case. vid.* the Count there.

Trover.

Count upon bailment to B, which loses it, and that the Defendant found it, and yet *detinet* lies, *Lib. Intra. 212. B. sect. 3.* for neither by the bailment, nor by the losing and finding it, is the property altered or divested out of the Bailor.

Count of a Horse found, *No. Lib. Intr. 169. D. Sect. 2.*

Contract.

A counts upon a bargain for Corn to be delivered at a day to come, that such a day, year and place he bargained for eight quarters of Corn, *ad valentiam*, to be delivered, &c. *No. Lib. Intra. 169. B. sect. 1. Vid. antea*, by the contract the property was divested out of A.

Obligation

For two Obligations, *Lib. Intra. 220. A. Sect. 1.*

Husband
and Wife
for box
with deeds

The Husband and Wife count, that they were possessed of a Box sealed with Deeds concerning Lands of the Wife, &c. and lost them, and they came to the hands of the Defendant such a year, day and place, *per Trover, &c. Lib. Intra. 209. B. Sect. 3.*

Count

Count of a box with Deeds, *Lib. Intra. 202. B. scđ. 7.* Though unsealed, yet it lies. *Q.* whether he must not shew what deeds particularly.

Coups that his Brother, whose Heir he is, was seized of Land in Fee, and of a box sealed with Writings touching the Land, and he lost the box, and it came to the hands of the wife *dum sola fuit*, and that his brother dies without issue and the Lands descended to him, and that the woman takes a Husband *per quod, &c. Lib. Intra. 209. D. scđ. 4.* the Action lay against them; for the marriage gains no property where the wife had none before.

Heir against Executors, *Lib. Intra. 210. A. scđ.* Heir. 5. of the Ancestor for things touching the Lands he inherits.

The heir in a Detinue for a box with deeds ought to count that it was sealed, for otherwise it belongs to the Executors, *36 Hen. 6. 27. pl. 26. 39 Edw. 3. 7, 8. 41 Edw. 3. 2. 11 Hen. 49. A. Paston. Q.* how the sealing should make a difference.

And yet the sealing is not traversable, *41 Edw. 3. 2.*

The heir ought to count of the certainty of the Land, and also how it was conveyed to him, *3 Hen. 6. 19. pl. 31. 19 Hen. 11. pl. 29.* or else it cannot appear the deeds belong unto him.

He ought to count as heir, if he claims as heir, *7 Hen. 6. 31. pl. 25.* for every one ought to make his case as it is.

But if he counts upon Bailment to rebail to him and his heirs, he need not to set forth the Title to the Land, *19 Hen. 6. 41. pl. 84.* for there

there the Action is meerly founded upon the bailment and detainer.

If a Feoffee with warranty make a Feoffment with warranty, his Heir shall have a Detinue, and count specially, *Coke 1. part. 2. A. Buckbursts case*, as his case is.

The heir counts that his Father was seised in fee, and demands the deed of the estate tail, and good; for his Father may discontinue and take it again in Fee, *38 Hen. 6. 24. pl. 11.* and therefore his count shall be presumed to be good.

Feoffee.

Count *per Feoffee, Lib. Intra. 210. sect. 6.*

Note.

Note, if the Writ be of *bona & catalla* the Count cannot be of Charters, *22 Edw. 4. 12. pl. 32.* for *bona & catalla* are not proper words generally to express Charters by, because they belong to the real, and not personal estate, and Goods and Chattels are usually intended personal things.

And needs not say in the Count how the Defendant came to them, *9 Hen. 5. 14. pl. 22. 4 Edw. 4. 9. pl. 11. Lib. Intra. 213. A. sect. 2.*

If the Writ be of a box with Deeds, the Count shall be accordingly, and not of a deed certain, *41 Edw. 3. 2. pl. 5. 14 Hen. 6. 4. A.* Pleading ought to be plain and certain.

The Plaintiff in a Detinue for Deeds for Land ought to make title to the Land in the Count, *33 Hen. 6. 26. pl. 12. Prior*; for otherwise he ought to make request for the deeds, and then an Action upon the Case lies, if they be detained from him.

The

The Writ in Detinue, 1. Of Chattels;
2. Of Deeds.

1. In Comitatu dicitur injuste detinet, Regist. orig. 139. B. that is, in the County Court.

Si quis rem mobilem vendicaverit, ex quacunque causa oblatam vel commodatam, debet in actione sua definire pretium, & sic proponere actionem suam; quia ille à quo res petitur non tenetur precise ad rem restituendam, sed sub disjunctione, vel ad rem, vel ad pretium, Brañon Lib. 3. fol. 102. B. Where you may recover damages for the thing detained, the value of it must be set forth; that the Jury may judge of them.

If it be against an Executor it needs not name him Executor, because he is only charged with the Detainer, 29 Edw. 3. 38. pl. 12. quare tamen, for the Detainer is not in his own right.

Rex, precipimus tibi quod justicies L. quod In Comitatu, &c. reddat T. quandam chartam, vel duas chartas, vel quoddam scriptum obligatorium, vel conventionale, vel acquietantie, vel quiete clamantie, vel testamentarium, vel quoddam Chirographum, quod, quas vel qua, ei injuste detinet, ut dicit, sicut rationabiliter monstrare poterit, ne amplius, &c. Regist. orig. 159. B. Nat. br. 138. B.

Rex, precipe F. quod reddat W. quandam In Banco chartam, &c. quam ei injuste detinet, ut dicit, & nisi feceris, &c. Regist. orig. 159. B. Nat. br. 138. B.

The Writ for Deeds in a Bag, Box, or Chest. vid. Regist. 159. B. Lib. Intra. 209. C. Sect. 1.

Note,

Note, when a man demands Writings in a bag, box, or chest, he needs not make mention in the Writ or Count what Writings they were, *Regist. orig. 160. A.* because they were together and entire; but if loose it is otherwise.

If one sue for Deeds in any Court without a Writ, a Prohibition lies; *vide the Writ, Regist. orig. 159. B. Nat. br. 139. C.* for men must proceed as the Law directs, and they are compellable so to do.

A bails Deeds to rebail to him and his Heirs, there the Heir need not mention that he is Heir in the Writ, *5 Edw. 3. 159. pl. 24.* for the Action is grounded upon the bailment. Yet *quare*, for here is a special bailment.

The Process in Detinue, 1. Before appearance.

2. After.

Detinue
for Char-
tels.

By the Common Law it was but a distress infinite, *Nat. br. 139. A. 14 Hen. 6. 1.* that is, to distrain him by his goods and Chattels until he appear.

But *per 25 Edw. 3. cap. 17.* a *Capias* was given to arrest the body of the party, to bring him in.

But lies not in a Detinue for deeds, *5 Eliz. Dyer 223. pl. 24. viz. a Capias.* *Q. rationem* it may be, because that may not be satisfactory to the party to have the person.

Detinue
for deeds.

The Process at Common Law was a Summons, Attachment and Distress, *Nat. br. 139. A. 14 Hen. 6. 1. viz. for deeds.*

But if the Deeds are in a box a *Capias* lies,
20 Edw.

20 *Edw.* 4. 3. *pl.* 12. 7 *Hen.* 4. 2. *pl.* 8. 14 *Hen.* 6. 1. *pl.* 1. 40 *Edw.* 3. 25. *pl.* 28. *Quere rationem.*

But then it ought to count of a Deed in certain, 14 *Hen.* 6. 1. *pl.* 1. and not generally.

The Garnishee may be summoned by word, Garnishee. 1 *Hen.* 5. 13. as well as by Writ.

The Garnishee may have a *Scire facias* to issue out against the Garnishee, and if he make default, judgment shall be given against him, *Lib. Intra.* 217. *B. sed.* 3. upon a *nihil dicit.*

The Garnishment in Detinue, 1. Of Chattels.
2. *Of Deeds.*

Garnishment is granted for saving the Condition, if it be not performed; only upon this, Garnish-
ment, whether the Defendant did perform it or not, and for no other cause, 40 *Edw.* 3. 11. *pl.* 24.

The Defendant in Detinue pleads, that the Plaintiff and B delivered this upon condition, and prays Garnishment, and had it allowed for a good plea, without shewing what the conditions were, 3 *Hen.* 4. 18. for that will appear upon the Interpleader of the parties.

And also the reason is said to be, because the Conditions come not in debate between the Plaintiff and Defendant.

Garnishment was prayed of the Heir and Executor of B, and accounted good; because it did not appear whether the Deeds in the box were real or Chattels, 14 *Edw.* 4. 1. *pl.* 3. 21 *Edw.* 3. 41. *pl.* 44. 48 *Edw.* 3. 30. *pl.* 19. and so not certain, whether the Heir or Executor was to be sued.

Garnish-

Garnishment granted against an Executor, because it was supposed that the Testator was one that delivered the deeds, 14 *Hen.6.11. pl. 42.*

The Defendant shall have Garnishment, although the Garnishee was a stranger to the Delivery, 14 *Edw. 4.2. 2.*

If the the Garnishee be returned dead, then his Heir or Executor shall be Garnie, and if it be for a Chattel, and it is returned that he is dead intestate, the Ordinary shall be Garnie, 48 *Edw.3. 3. pl. 19. viz. before letter of Administration granted.*

So of the Successor of a Garnishee, *Lib. Intra. 217.C.*

Executor shall have Garnishment upon a delivery to his Testator, *Lib. Intra. 216. D. Sec. 1.* and an Action thereupon brought against him.

*Enterpleader in Detinue, 1. Of Chattels.
2. Of Deeds.*

Enter-
pleader.

Note, that there shall be no Enterpleader unless the Defendant pray it, 18 *Edw. 3. 22. pl. 3.* for the Enterpleader is to secure him against both parties, and if he desire not relief, the Court will not put him upon it.

If the parties are by Attorneys, day shall be given over, because they shall not enterplead but in person, 9 *Edw. 3. 334. pl. 12. 24 Edw. 3. 24. pl. 3.* which they cannot then do, because they appear by Attorney.

And if one come at his day by Attorney, the other shall not have Judgment against him, 9 *Edw. 3. 334. pl. 12.* for there is no default in him.

Upon

Upon several Bailments there shall be no Enterpleader, 19 Hen. 6. 2. pl. 6. for there is no priority between the parties.

But if the Defendant said that he was Joynt-tenant, *absque hoc* that it was several, 19 Hen. 6. 3. pl. 6. then it seems there shall be an Enterpleader.

In Detinue the Defendant pleads another Writ, hanging by another, and prays Enterpleader, and it was granted for the mischief that might be; for otherwise both might recover the Deeds, and so the Defendant be twice charged, 3 Hen. 6. 43. pl. 20. which is unreasonable; for *nemo bis puniri debet pro uno salummado delicto*.

But there ought to be two several Writs depending at one time, for the same thing, 3 Hen. 6. 35. pl. 31. and these ought to be returned at one day, 9 Hen. 6. 36. pl. 9. 2.

If the Defendant and the Garnishee do not agree in plea, there shall be no Enterpleader, 14 Hen. 6. 11. for then the garnishment will be to no purpose to determine the question.

There shall be no Enterpleader unless the Defendant alledge, that both demanded one thing, 8 Edw. 4. 6. for the Enterpleader is to determine, who hath the right to that one thing.

If the Defendant after Garnishment make default, yet there shall be an Enterpleader, 2 Rich. 2. Enterpleader 13. for his default shall not prejudice a third person.

If it be returned at several days, then a day shall be given over, at which day they shall Enterplead, 33 Hen. 6. 25. pl. 8. viz. two Writs of Detinue for the same thing.

M

But

But if two Writs bear the same date, then he that first comes and demands answer, shall be answered, 19 Hen. 6. 4. *Lib. Intr.* 213. *A. & B. sect. 1. Vigilantibus, non dormientibus jura subveniunt.*

Otherwise he that the Court assigns, 19 Hen. 6. 4. that is, where they demand answer at the same time; for where the parties have equal right, it is in the discretion of the Court which Cause they will first proceed in, for they cannot proceed in both together, and such favour is no Injustice.

Barr in Detinue; 1. Of Chattels.

2. Of Deeds.

Accord.

Accord is a good plea in Detinue of any goods personal, *Coke 9. part. 78. B. Petoer's case*; but not of real.

Attach-
ment.

Barr that the goods were attached and delivered to him, only the custome of the City, *Lib. Intr.* 112. *C. sect. 5. of London* can warrant this plea in *London*.

Command.

A lent Sheep to a Woman sole, which took a Husband, which commanded the owner to take them again, who refused; this is a good barr as to the bailment in Detinue, 43 *Edw.* 3. 21. 10. for by the intermarriage the husband had power to redeliver the goods.

To deliver
over.

A good barr that they were lent to deliver over, of the which he had a deed, *Nat. br.* 138. *M.* to prove it. *Quere*, whether he ought not to plead in *Curia hic prolat.*

A good plea by the Executor upon bailment to the Testator, that he, *viz.* the Executor, had delivered them to him that had the right in the goods, 9 Hen. 6. 58. *A.*

Detinue

Detinue is no plea, that the Plaintiff gave him the goods, because he may wage his Law, 22 *Edw.* 4. 29. *pl.* 10. that the goods were not delivered to him to redeliver.

Detinue upon Trover, the Defendant pleads, that he did distrain for Rent reserved upon a Lease, a good barr, 27 *Hen.* 8. 22. *pl.* 15. for here can be no Trover.

In Detinue of a Horse, a good plea that he did estray into his ground, and that he proclaimed him and offered the Horse to the owner, if he would pay for his meat, which he refused to do, *No. Lib. Intr.* 169. *D. sect.* 2. for such a detainer is lawful.

A good barr to say, the Horse was sick in Detinue at the time of the demand, 21 *Edw.* 4. *Detinue br.* 42. and so could not be delivered without danger of his death; and the Law loves the preservation of things, and not their destruction.

Non detinet a good barr, *Lib. Intra.* 211. *D. sect.* 1. & 2. *fol.* 112. *C. sect.* 4. & 5. for it is directly contrary to the supposal of the Writ, and so a good issue is tendred.

And this may be by the Countrey, *Lib. Intra.* 211. *D. Sect.* 1, and 112. *Sect.* 4. *C. viz.* tried by a Jury as matter in fact.

Or by wager of Law, 22 *Edw.* 4. 29. *pl.* 10. *Lib. Intra.* 112. *C. Sect.* 5. 5 *Edw.* 3. 145. *pl.* 4. 27 *Edw.* 3. 83. *pl.* 6. 4 *Edw.* 3. 41. by the Oath of the Defendant.

Although the bailment be by deed, for the *Detinet* is the substance of the Action, 27 *Hen.* 8. 22. *pl.* 14. and not the bailment.

An Executor may wage his Law, 11 *Hen.6.40. pl.25. 3 Hen.6.38. Martin*, of a bailment made to the Testator. *Quere*, or whether upon the *detinet*.

Non detinet by the Law gager, although the bailment be by others hands, 8 *Hen.6.10. pl.26. 33 Hen.6.8.B. Moyle*, is a good barr.

Payment
to the va-
lue.

If an Executor pays a debt of the Bailors to the value of the goods, and dies, this is a good barr in Detinue brought against the surviving Executor, 3 *Eliz. Dyer 187. pl.6. 2*

Pledge.

The Defendant said, that the Plaintiff pledged them for money, which is not paid; this is a good barr, 34 *Hen.6.42. pl.13.* for here is no bailment, but the goods are in custody of the Law.

Perish.

Corn is lent, &c. and it perisheth; this is no barr, *Doct. & Stud. 129. A.* in a Detinue for the Corn, for the Borrower ought to make it good at his own peril.

A Horse used in other manner than was agreed, no barr if he perish. *Vid. antea*; for he is a trust abused, which the Law hates.

But if he be used in the same manner, if he perish not in default of the party to whom he was lent, it is a good barr, *Doct. & Stud. 129. A.* for here was no trust deceived, nor fault in the Bailee.

Robbery.

No plea for a Carrier or Ferryman, that he was robbed, *Coke 4. part. 84. Southcotts case, 2 Hen.7.11. B. Townsend*, but they must take their remedy against the Thieves, and they are by Law answerable to the owners of the goods.

So if goods are delivered to keep, *Coke 4. part. 83. B.* for such an acceptance implies a warranty

ranty to keep them safe, and to redeliver them.

But it is a good plea, if they are taken to keep as my own, *Coke 4. part. 83.* for there is no such warranty implied. *Vid. antea.*

Recovery in Trespals a good barr in Detinue, *Recovery.*
20 *Hen. 7. 58. B. Crooke*; for there shall not be a double recovery for one thing.

The bailment is not traversable where he may *Travers.*
wage his Law, 8 *Edw. 4. 3. pl. 7.* for there his Oath that he detains not is sufficient; for if he detains not, there could be no bailment.

No barr that the Horse was sold in a Market *Vendor.*
overt, unless it were tolled, according to the Statute, 1 & 2 *Phil. & Maria, cap. 7.* for no property is altered by such a sale. *Vid. antea.*

Detinue for Deeds as Heir, Bastardy is a good *Bastardy.*
plea, 35 *Hen. 6. 9. pl. 12.* for if a Bastard, he is no Heir.

A bailed to *B* to rebail, and dies, having two *Feoffment*
Sons, which makes partition, he which had the Land comprehended in the deed delivered enfeoffs *B*; this is a good barr, 17 *Edw. 3. 12. pl. 45.* for by the purchase the deed belongs to *B*.

Warranty and Affets is no barr against the issue *Warranty*
in Tail in Detinue, 9 *Hen. 6. 15. pl. 5.* 4 *Hen. 7. 10. pl. 4.* for he comes in by the Donor.

Rebailment in another County a good barr, *Rebailment.*
because he cannot wage his Law, 22 *Hen. 6. 15. pl. 27.* because the bailment was in one County, and the Action is brought in another County.

Release *per* the Plaintiff a good barr, *Lib. Release.*
Intra, 290. B. Sect. 1. for by the Release the property was altered.

Retainer.

The Defendant pleads bailment of deeds by the Plaintiff, upon condition, that if his wife the Plaintiffs survive the Plaintiff, that the Defendant should retain it, and that his wife is alive, a good barr; but then he ought to shew what Lands they concern, 18 Edw.4. 18. that it may be known unto whom the deed belongs.

Infancy.

Infancy is no plea, because he may avoid an obligation in debt, 14 Hen.6.11.pl.41. by pleading *deins age*.

Recce crys

A good bar that the Garnishee brought a Detinue against the Defendant, and prays Garnishment against the Plaintiff, which makes default, and he had judgment, 34 Hen. 6.47. pl.13. 21 Hen.6. 35. pl.2. per Newton.

Release.

Garnishee pleads release between the time of this Action brought, and the delivery, & *quare*, 20 Hen.6.28. pl.23. 49 Edw.3.13.

But 39 Edw.3.13. adjudged, that it is a good barr, and so it seems the Law to be.

*The Judgment in Detinue; 1. Of Chattels.
2. Of Deeds.*

Against
the Defen-
dant.

1. *Quod prædictus W. recuperet versus præfat. J. prædicta octo quarteria frumenti, vel valorem eorundem, No.Lib. Intra. 169.C. Seci.1. Lib. Intra. 218.B. Seci.4. & dampna sua, &c.* and upon the return of the Writ, if it appears that *W.* did not deliver the Corn, then the judgment shall be for the value with damages and costs. So see the difference, where the Plaintiff himself delivers the thing, and where another.

The

The Plaintiff shall have judgment to recover the thing named, 17 Edw. 3. 45. 1. Rich. 3. 1. & 2. or the value of it, and damages for detaining of it, as appears above. Plaintiff

The judgment was, that he should recover his Chattels, and his damages, 21 Hen. 6. 36. A.

Braddon, Lib. 3. fol. 102. B. non tenetur precise ad rem restituend. sed sub disjuncti. vel ad rem, vel ad pretium; either the thing, or the value of it in damages.

The judgment was, that he should recover the deeds, if they are found, and also damages for the detainer; and if not found, then all in damages, 7. Hen. 6. 31. pl. 25. 22 Hen. 6. 41. pl. 17. Against the Defendant.

And this shall be, although it be proved that the Defendant burnt the deed, 17 Edw. 3. 45. pl. 1. for that shall not excuse.

Ideo consideratum est, quod predictus A. recuperet versus prefat. B. pyxidem predictam cum chartis, &c. Lib. Intra. 218. A. Sect. 1. the box with the writings.

The Heir in Detinue had judgment to recover one box, with as much as was in it contained that belongs to him, 5 Edw. 3. 159. B. intended to be of writings.

The judgment was, that he should recover the deeds against the Defendant, & *haberet liberatam nem. versus* the Garnishee, 21 Hen. 6. 36. A. Lib. Intra. 219. D. sect. 17. 9 Hen. 6. 38. pl. 13. 7 Hen. 6. 45. pl. 27. This is a double judgment, viz. of the right, and of the possession. Against the Defendant and the Garnishee.

But if Judgment be given upon default of the Garnishee before appearance, no damages shall

be given, 20 *Hen.* 6. 4. *pl.* 27. for this is not the Defendants fault.

If the Plaintiff and Defendant make default, the Garnishee shall have Judgment, and the Plaintiff and Defendant in *miser cordia*, 40 *Edw.* 3. 39. *pl.* 15. for his unjust vexation.

Execution in Detinne; 1. Of Defendant.
2. Against the Garnishee. 3. Of what Lands.
4. Of what Goods.

Chattels.

Execution against the Defendant by distress for the thing detained and recovered, *Nat. Lib. Intra.* 169. *C. sed.* 1. 20 *Edw.* 4. 3. *pl.* 12. *No. Lib. Intra.* 170. *D.* 17. *A.* 6 *Rich.* 2. *Execution.*

But if the thing be not delivered to the Plaintiff, then he shall have execution for the damages by *Capias*, *Lib. Intra.* 216. *B. sed.* 6. 20 *Edw.* 4. 3. *pl.* 12. against the person of the Defendant.

For a *Capias* was given in the main Process per 25 *Edw.* 3. *cap.* 17. and by consequence a *Capias ad satisfaciend.* in execution by the equity of that Statute.

At the Common Law execution was for damages by *fieri facias*, and also for the goods, *Lib. Intra.* 216. *B. sed.* 8. to be levied upon the goods of the Defendant.

For damages by *fieri facias*, and for the thing by distress of the Goods and Chattels, 6 *Rich.* 2. *Execution* 45.

Deeds.

The Plaintiff and Defendant make default, Garnishee had Judgment and distress against the Defendant, 40 *Edw.* 3. 39. *pl.* 15. *Vid. antea.*
 Distress

Distress issued forth in execution, *Lib. Intra.* 215. *C. sect. 1.* 20 *Edw. 4. 3. pl. 12.* 22 *Hen. 6. 41. pl. 17.*

But *Capias* lies not, 5 *Eliz. Dyer* 223. *pl. 24.* 21 *Hen. 6. 42. vid. antea.*

If the deeds concern Lands, 8 *Hen. 6. 29. pl. 24.* 14 *Hen. 6. 1. pl. 1.*

But for the damages, if they will not deliver them, a *Capias* lies, 22 *Hen. 6. 41. pl. 17.* 20 *Edw. 4. 3. pl. 12.*

If deeds are in a box, then a *Capias ad satisfaciendum* lies in execution against the person, 7 *Hen. 4. 2. pl. 8.* 14 *Hen. 6. 1. pl. 1.* 40 *Edw. 3. 25. pl. 28.*

But for damages at the Common Law it was but a *fieri facias*, *Lib. Intra.* 216. *B. sect. 7.* upon the goods and Chattels.

Or a *levari facias*, *Coke 3. part. 12. A.* upon Lands and goods.

And this only within the year, for after the year the party had but an Action of Debt, *Coke 3. part. 12. A. vid. antea.*

Unless the Suit be continued, 33 *Hen. 6. 49. pl. 33.*

But by *Westm. 2. cap. 450.* a *Scire facias* is given after the year to revive the judgment, and by *Westm. 2. cap. 18.* an *Elegit* is given, *antea*, upon the Lands.

And by the twenty fifth of *Edw. 3. cap. 17.* *Capias* is given in Process for deeds in a Box, and by consequence a *Capias ad satisfaciendum* in execution, *Lib. Intra.* 216. *A. Sect. 3.* 40 *Edw. 3. 25. pl. 28. antea.*

If

Deeds.

If damages shall be recovered against a Garnishee, the execution shall be of the goods and Lands of the Garnishee, 7 Hen. 6. 43. pl. 27. 9 Hen. 6. 38. pl. 13. 19 Hen. 6. 4.

But not of his body, because he was not party to the Writ; 7 Hen. 6. 45. pl. 27. 9 Hen. 6. 38. pl. 13. upon which the Action was brought, but comes in by Garnishment.

But the Book of Entries 216. B. sect. 6. *Capias ad satisfaciendum* was awarded against a Garnishee, for damages recovered against him. *Quere*, if as well for the detainer as for the thing detained.

Debt.

DEBT.

Quid.
Quotuplex.

- 1. Parliament.
- 2. *Ben. Rega.*
- 3. Chancery.
- 4. *Com. Ban.*
- 5. Exchequer.

1. Of Record.

1. General in Court

- 1. Pypowders in a Village.
- 2. Pypowders.
- 3. Tourn of the Sheriff.
- 4. Common Right.
- 5. Lett.

Common Law

Upon Judgment,

- 1. Not of Record.
- 2. County Court.
- 3. Court Baron

- 1. Ancient Demeffil.
- 2. Hundred.
- 3. In any Mannor.

1. In Court,

2. Special

- 1. Statute
- 2. Staple.

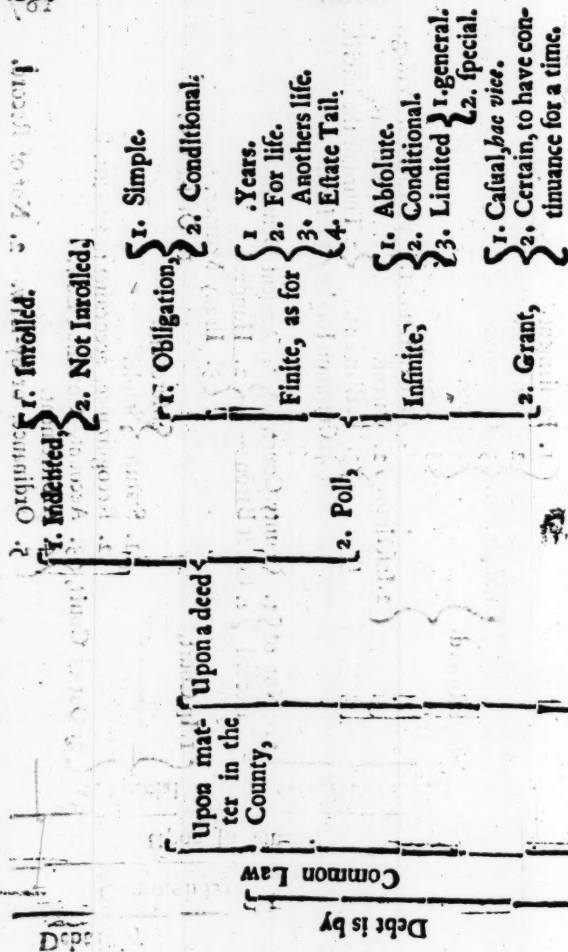
1. Of Record.

2. Out of Court,

- 1. Recognizance, according to 23 Hen. 8.
- 2. Account, Common Law.
- 3. Arbitrament.
- 4. Ordinance, or by Law.
- 5. Not of Record.

Debt is by

Debt.



D E B T

Debt is by

Common Law

Upon mat-
ter in the
County

Without a Decd

- 1. Lent.
- 2. Bailment to
- 3. Contract real.

2. Personal.

1. Chattels

Rent upon a Lease for
life during the Lease.
Lease at Will.
Lease for years.

After the Lease ended

- 1. Effluxion.
- 2. Limitation.
- 3. Condition.

2. A real thing.

Collateral.

- 1. Rent reserved.
- 2. Agistment.
- 3. Partition. (lick.
- 4. Tabling and Phy-
- 5. Vention.
- 6. Marriage money.
- 7. Chirurgery.
- 8. Taylor for

Con-
general
A Garment, tract.
special.

- 1. Counsellor.
- 2. Attorney.
- 3. Servant for one day, as Labourer.
- 4. Retainer as for one or more years.

- Relief.
- Aid.
- Toll.
- Fees.
- Robbing.
- Escuage.
- Ratione-

bills parte bonorum.

- 4. Upon Tail.
- 5. Matter in Law.

Debt.

By the party
grieved.

Statute Law.

- Westm. 2. cap. 11.* Upon an escape of an Accountant in Execution.
- 1 *Rich. 2. cap. 12.* Upon an escape of a Debt, or in Execution.
- 33 *Hen. 6. cap. 1.* Against a Goaler which suffers a Servant to escape, which was committed by the Chief Justice.
- 23 *Hen. 6. cap. 15.* Against a Sheriff, for not returning a Knight of the Parliament.
- 2 *Edw. 6. cap. 13.* For a Parson against him that will not set forth his Tithes.
- 7 *Edw. 6. cap. 6.* Against a Receiver that takes more than he ought, forfeits 6 s. 8 d. for every peny to the party grieved.
- 1 *Edw. 6. cap. 14.* Debt against a Seller of Lands given to the King by the said Statute.
- 1 *Marie cap. 9.* Goaler which refuses or suffers a person committed by the Colledge of Physicians to escape.
- 13 *Eliz. cap. 4.* Upon a fraudulent Conveyance to defeat Creditors.
- 3 *Jac. cap. 7.* If an Attorney suffers another to practise in his name in Court, he forfeits 20 l. and the other that follows the Suit in his Name 20 l.
- 4 *Jac. cap. 3.* The Defendant shall have the same remedy for his Costs, as the Plaintiff should have had, if he had recovered.
- 1 *Jac. cap. 21.* Debt against a Broker, for double the value of the thing, if he refuse to disclose the truth.

1 *Jac.*

1 *Jac. cap. 15.* Creditor of a Bankrupt shall have an Action of Debt to him assigned.

5 *Eliz. cap. 13.* The Owners of the soil against the Surveyors of Highways, which dig in a mans Ground, and not fill it up again within one Month, the forfeiture is 3 *l.* 6 *s.* 8 *d.*

The Lord of the Leet for erecting a Cottage, To a person or Inmate, shall have an Action of Debt, *certain.*
per 31 *Eliz. cap. 7.*

14 *Hon. 8.* Physicians in London, for practising without License.

17 *Edm. 4. cap. 2.* A Steward of Pypowdets forfeits 5 *l.* if they hold plea, unless the *Action p.* Plaintiff, or his Attorney, swear that the *pular.* thing was within the Jurisdiction, and in the Fair, 1 *Rich. 3. cap. 6.*

Debt, in what Court it lies.

IN the County Court, *Nat. br. 119. G. Regist. orig. 139. A.*

In a Village, City, and Burrough Liberty, *Nat. br. 119. K.*

In Pypowders, *viz.* a Court held in a Fair.

But by the 17 *Edm. 4. cap. 2.* the Plaintiff or his Attorney ought to swear that it was in the Fair, and within the Jurisdiction, 1 *Rich. 3. cap. 6.* and if he refuse, the Defendant shall go quit by the Statute & for it appears not that the Court had Jurisdiction to hold plea.

It

It lies in the Marthalsey, if both are of the household of the King, otherwise not; but the Plaintiff needs not shew this in his Count, and the proceeding there is by bill, *Coke 10. part. 61.* Case of Marthalsey; for if it be not so the Defendant may demur to the jurisdiction of the Court.

In Chancery, for a person priviledged debt lies, *viz.* in that Court; for the Chancery to some purposes is a Court of Law as well as of equity.

In the Exchequer by *quo minus*, *Coke 8. part. 68.* *A. Trollops* case; but then the Plaintiff must make himself an Accountant to the King.

So if one usurp upon a Franchise of the King, where the Plaintiff had Fee Farm, the Fee Farmer shall sue by a *Quo minus*, *32 Hen. 6. 24. pl. 7.* in the Exchequer; for he is an Accountant to the King.

An Executor shall have a *Quo minus*, when he is a debtor to the King by his own act, *8 Hen. 4: 10. pl. 19.* as Executor.

In Com. Ban. Nat. br. 119. G.

Note.

Debt lies not for a popular Action, or upon a penal Law, but in one of the four Courts of Record at *Westm. per Statut. 18 Eliz. cap 5. Coke 6. part. Gregories* case; for those Courts are fittest to interpret Statutes, and not inferiour Courts.

Who shall have Debt.

If a Bailly account for his Master, and surplussage be found due to his Master, he shall have debt for it, *Nat. br. 121. I. the Count, Lib. Intra. 150. D. sect. 1. quere*, if it be not meant where the Bailly accounts with his Master.

But a Receiver shall not, *Nat. br. 121. I. 38 Hen. 6. 5. pl. 14 Mich. 12 Jac. Ban. Regis*, Countess of *Suffolke & Floyde*; for the Law takes not so much notice of a Receiver, as of a Bailly.

Adminiftrator shall not have debt until, *31 Edw. 3. cap. 11. Nat. br. 120. D. Coke 9. part. 39. A. Henfloes case*; for the Common Law takes no notice of an Adminiftrator.

1. An Adminiftrator ought to count; that he which committed the Adminiftration, was the Ordinary of the place where the intestate died, *31 Hen. 6. 23. pl. 5. Com. 277. A. per Dyer*. If it be a particular Jurisdiction, he must say, *cui administratio pertinuit*.

2. he ought to name the place where the Adminiftration was to him committed, *35 Hen. 6. 31. pl. 39. Danby & Moyle*; because it is traversable.

3. He needs not name the Ordinary by his Christian name, *7 Hen. 4. 10. pl. 18*. for the place where makes it certain enough who it is.

But in a Writ *de Colligend.* he shall be named. *Q. de ceo brief.*

An Adminiftrator shall have debt upon, *1 Edw. 2. cap. 14.* for money given to Chantery.

If the Ordinary release a debt to a Debtor of the Intestate, and afterwards grants Administration to *A*; yet *A* shall have debt against the Debtor, for the Release is void in Law, 18 *Hen.* 6.23. *Coke* 9.part.39. *A. vide Crooke* 127. *pl.*90. for the Debt is not the Ordinaries.

Attorney.

Att.

Attorney shall have Debt for his Fees, and Fees of Counsel, and costs of Suits, *Nat.br.* 121. *L.* 21 *Hen.* 6.4. *Quere of Counsell's Fees*, if not expended by his Clients direction.

Bailor.

If *J.* deliver money to bail over, or to a Merchant to trade with for me, or to be given in Alms, or upon a condition to rebail, if he break the trust, *J.* shall have debt against him, 28 *Hen.* 8. *Dyer* 22. *pl.* 135. 11 *Hen.* 6.39. *pl.* 3. 42 *Edw.* 3 9. *pl.* 7. *Crooke*, 21 *Hen.* 7.69. *pl.* 2. *per Fromicke*; for if the trust be not performed, the money belongs to the Bailor.

Husband.

A is bound to the Husband and Wife, the Husband alone shall have the Action, 3 *Hen.* 6.37. *pl.* 35. 12 *Rich.* 2. *bre.* 637. in his own name only, if he will.

Or in both their names, 39 *Edw.* 3. 5. *pl.* 19. 43 *Edw.* 3. 10. *pl.* 31. 3 *Hen.* 6.37. *pl.* 35. 12 *Rich.* 2. *bre.* 639. 16 *Edw.* 4. 8. for the Husband may interest his Wife in the debt.

Husband
and wife.

Husband and Wife assign Auditors to receive a debt due to the Wife *dum sola fuit*, and brought debt for the Arrearages in both their names, and good; because the wife was the cause of the Action, 16 *Edw.* 4. 8. *pl.* 4. because the debt was due to her *dum sola*.

Husband and wife lease for years Lands of the wife rendering Rent. the Husband dies, and the second

second Husband brought debt, and good, 28 Edw. 3. 90. pl. 4. for the Law creates a privity in him.

A Woman leases at will rendering rent, and takes a husband, the Rent is behind, they joyn in debt, and good, Coke 5. part. 10. Hensteads case; for the marriage shall not determine her will so as to extinguish the debt.

A Woman shall not have an Action against her husband, although she is Executrix, 8 Edw. 3. 330. pl. 48. for she cannot sue her self, and the husband and wife are but one person in Law.

Ni:

A is bound to the husband and wife, and they are divorced *causa præ-contractus*, and they brought debt in both their names, No. Lib. Intra. 121. sect. 5. for the divorce makes the marriage void *ab initio*, and so the obligation is void, and therefore the Action not well brought, as it seems.

B had a Rectory in right of his wife for years, and they both joyned in debt upon the Statute of 2 Edw. 6. for not setting forth of Tithes, Hill. 39 Eliz. Ban. Regis Rot. 699. and good; for the Action is grounded by reason of the wife.

Lease for years rendering Rent by the husband and wife, husband may have debt in his own name, 7 Edw. 4 5. pl. 16. for the Rent belongs to him.

The same Law is, if the Reversion be assigned to the husband and wife, although that the husband count as Assignee, Trin. 12 Jac. Ban. Regis, Wyatts case. Quere, whether in both cases the Action may not be brought in both their names.

Husband and wife sold the Land of the wife, the husband alone shall have debt, 48 *Edw.* 3. 18. *pl.* 4. for the money belongs only to him.

Husband and wife recover dammages, the husband alone shall have debt for them, 16 *Hen.* 6. *bre.* 939. for the husband shall have them.

A woman Tenant in dower of Rent takes a husband and dies, the husband shall have debt for the Arrearages during the Coverture, *Nat. br.* 121. *C.* 14 *Hen.* 6. 26. *A.* 10 *Hen.* 6. 11. 22 *Hen.* 6. 25. 26 *Edw.* 3. 64. for the Rent was due to him.

And by 32 *Hen.* 8. *Ca.* 37. the husband shall have debt for the Arrearages before the Coverture, *Coke* 5. *part.* 51. *A.* *Ognels* case, else the Rent would be lost.

Annuity to the wife that takes a husband, Arrearages incurr, the wife dies, the husband shall have debt, because it is more than a thing in Action, *Hill.* 29 *Eliz.* *Com. Ban.* *St. Legers*, for it is a duty incurred.

But if it be but for a thing in action before the Coverture, as an Obligation, the husband shall not have it, *Nat. br.* 121. *C.* 39 *Hen.* 6. 26. *pl.* 38. because of the incertainty, whether it were due to the wife, or not.

But during the Coverture the husband may release it, 17 *Edw.* 3. 66. *pl.* 78. *Hill*; for that passeth nothing but by way of extinguishment of his right, if he have any.

Husband makes his wife Executrix, which takes a husband, and makes him Executor, and dies; the husband brought debt for the debt to the former husband, and good, 4 *Hen.* 6. 31.
for

for now it is become due to him as Executor of an Executor.

It lies in the name of the Clerk of the Peace for the Hundred against the Village, where default is made in Hue and Cry, by the Statute of 27 *Eliz. cap. 13.* and reason, because thereby the Hundred becomes liable to pay the money robbed.

A Colledge shall have debt for Commons of a Colledge ny Student, *Pasch. 9 Jac. Ban. Regis*, Colledge of in Oxon. *St. Johns in Oxford versus Brickeden.* Q. if the Student be of the Foundation.

Colledge of Physicians, for practising without License shall have debt upon the Statute; but the Master sole shall not, *Hill. 11 Jac. Ban. Regis*, Colledge of Physicians *versus* Dr. Tenant, *Lib. Reports*, title *Plaints*. Q.

Debt lies by a Conusee of a Statute or Recognizance, *Nat. br. 122. D. 11 Hen. 6. 49. pl. 7. 36 Hen. 5. 2. pl. 2. 39 Hen. 6. 3. pl. 5. 22 Eliz. Dyer 369. pl. 52. 13 Rich. 2. bre. 649.* upon the Statute or Recognizance.

Debt upon a retainer to be his Counsellor for 40 s. *per annum*; but then he ought to count that he was of his counsel, or was ready to be, 37 *Hen. 6. 8 B. Prifott*, if required.

But if I retain a Sergeant at Law for *A*, he shall not have debt for his salary against me, 31 *Hen. 6. 9. B. Fortescue*; for he is retained for his Client, and it is reason he should pay him.

Executor shall have debt for a debt due to the Testator, 11 *Hen. 6. 7.* for he is in place of the Testator.

Executor of an Executor shall have debt, 25 *Edw. 3. Ca. 5. & sic in infinitum*, as it seems.

Executor shall not have debt before *probat* of the Testament, 7 *Hen. 4. 18. Coke 5. part. 28. A. Midletons case, Com. 278. Foxes case, Perkin 193.* for before that he is not Executor in the eye of the Law.

But if (*pendente breve*) the Testament be proved, it sufficeth, *Pasch. 43 Eliz. Com. Ban. Walmesly*; for that relates to the death of the Testator, and so includes the time of hanging the Action.

Feme.

Rent services granted to the husband and wife for life, the husband dies, the wife shall have the Arrearages that did accrue in the life of the husband, and debt for them after the estate ended, 29 *Edw. 3. 40. pl. 19.* for here is a surviving estate in the wife.

Grantee of
a Reversion.
Annuity.

Grantee of a Reversion shall not have debt for Rent upon a Lease for years before Attornment, *Nat. br. 121. N.* for before Attornment the Reversion passed not.

But a Devisee shall have it, *Nat. br. 121. N. Mich 14 Jac. Ban. Regis*, Bayliffs and Burgesses case of *Ipswicke*; for there it passeth by the will.

So Bargainee shall have it, *Coke 3. part. 24. A. Walkers case*; for it passeth by enrolment of the Deed.

Fair.

A is bound to B and his heirs, B dies, his heirs shall not have debt, *Nat. br. 120. I.* but the Executor; but contrary where A binds himself and his heirs to B.

But

But if a penalty be granted to one and his heirs, then the heir shall have debt, *Nat. br.* 120. *M.* 11 *Hen.* 4. 84. 28 *Hen.* 8. *Dyer* 24. *pl.* 149. for that is a present duty, wherein the heir hath interest.

The heir shall have debt for the reasonable part of the goods; where the custome gives it him, *Nat. br.* 122. *L.* for this is a customary duty, for which the Law will give a remedy.

But if there be no such custome it lies not, *Regist. orig.* 142. *B.* 40 *Edw.* 3. 38. *pl.* 19. 7 *Edw.* 4. 20. *pl.* 23. 30 *Edw.* 3. 26. *A. seton.* *Regist. orig.* 141. *B.* for the Common Law takes no such notice of the heir, to have any goods as heir.

For the Statute of *Magna Charta* is but one *forspriu*, and for that an Action shall not be founded upon it, *vide Lib. Intra.* 541. by reason of the incertainty of the meaning of the Statute in that point.

But *Nat. br.* 122. *L. Glanvill, Lib.* 12. *cap.* 20. 17 *Edw.* 3. 9. *pl.* 29. this is by the Common Law. *quare.*

Custome, that the heir shall have the principal Chattels, &c. he shall have debt for them, 30 *Edw.* 3. 2. *pl.* 9. 39 *Edw.* 3. 6. *pl.* 24. & *fol.* 9. *pl.* 15. The Law takes notice, and maintains ancient Customs. †

Lessor shall have debt for Rent reserved upon a Lessor. Lease at will, *Coke* 5. *part.* 10. *Honsteds case, Littleton* 15. by reason of the privity of the Contract betwixt the Lessor and the Lessee.

And so for a Lease for years, 7 *Rich.* 2. this seems a stronger case.

Tenants in Common make a Lease rendering Rent, they ought to joyn, *Littleton* 72. in the
N 4 Action

Action in respect of their joyning in the Lease, and so a joynt interest passed.

Ordinary. The Ordinary shall not have debt, because he hath not absolute interest in the things of the Intestate, *Coke 9. part. 33. Henslowes case, Nat. br. 120. D.* but hath it only as a Conduit-pipe, to derive it to others to whom the Law directs.

Parson. A Parson shall have debt for not setting out of Tithes, by the Stat. of 2 *Edm. 6. cap. 13.* and recover treble damages.

Physician. A Physician shall have debt for Physick and Diet, *Lib. Intra. 187. B. Sect. 1.* upon a *quantum meruit*, if there be no special contract.

Recusant. Recusancy shall be pleaded in disability for such Lands and Tenements which are not seized into the Kings hands, 3 *Jac. cap. 5.* in disability of the person to sue. *Q.*

Robbery. The party robbed shall have an Action against the Hundred *per le Stat. 27 Eliz. cap. 13.*

But he ought to bring his Action within the year after the Robbery done, 27 *Eliz. cap. 13.*

And the day of the Robbery shall be accounted parcel of the time, *Pasch. 15 Jac. Com Bar. per 2 Justices*, as it seems, because the Law is penal. *Quare tamen.*

Steward. Steward of a Court retained by word for such a sum *per annum*, shall have debt for his salary, 8 *Eliz. Dyer 248. pl. 79. Coke 4. part. 30. A.*

Servant. Servant shall have debt for his salary, 11 *Hen. 6. 10. pl. 29.* upon the contract which created a duty.

One retained in *England* to do service beyond the Sea shall have debt in *England* where the retainer was, *Nat. br. 120. E.* and not where the

the service is done, because it is beyond Sea; *aliter quere.*

Servant retained by a Corporation without deed; shall not have debt for his salary, 4 *Hen. 7. 6. Com. 91. B.* for such Retainer is null in Law, and the Servant could not have been compelled to serve.

One sole Corporation shall not have a personal Successor. thing in Succession, *Coke 4. part. 65. A. Fulwoods case, 19 Hen. 6. 44. pl. 94. 20 Edw. 4. 2. vide 32 Hen. 8. Dyer 48. pl. 14. for personal things cease with the person.* Sole Corporation consists of one person.

Unless the Custome will warrant it, *Coke 4. part 65. A. Fulwoods case.* Custome, if it be not unreasonable, makes a Law.

But a Corporation aggregate, that is, consisting of many persons, shall have an Action for a personal thing in succession, *Coke 4. part. 65. A. 20 Edw. 4. 2.*

Master of an Hospital recovers dammages, the Successor shall have them, 19 *Hen. 6. 44. pl. 94.* for the benefit of the house.

Abbot recovers dammages in a battery, and is removed or created Bishop; his Successor shall have them, because he recovered them, but to the use of his house, 22 *Hen. 6. 4. B.* for he could sue in no other capacity being a dead person in Law.

A is bound to an Abbot sole, the Successor shall have debt, 47 *Edw 3. 23. pl. 57. the Count, Lib. Intra. 179. A. fell. 7.* for it was to the use of the house.

An Obligation made to Churchwardens, their Successors shall not have an Action being their Executors, for this is but an Office and cannot be

be derived to others; but as their Successors it seems it may. *Q*

Chirurgeon.

If *A* contracts for *B* with the Chirurgeon for so much as to cure him, if *B* die the Chirurgeon shall have debt against *A*, for it is a good contract, 37 *Hen. 6.9. A. Moyle*, to bind it. *Q*

If *I* sell a Horse, and earnest is given or day set, *I* shall have debt for the money, 14 *Hen. 8. 19. br. Contract. 15. Coke 3. part. 22. A. Walkers* case, and the losing of the Earnest will not avoid the Contract, as the vulgar opinion is.

Vendor.

If *I* sell a Mannor, debt lieth for the money, and yet the Vendee cannot enter before livery, 37 *Hen. 6.8. pl. 18. Prisett*, upon the Contract, for the Vendee may force him to make livery.

Sheriff.

The Sheriff shall have debt for his Fees, *Trin. 14 Jac. Ban. Regis*, Sheriff of London against Michel, *per le Stat. 28 Eliz. cap. 14.* for the Law creates the duty, when he hath performed his office.

Use.

If *A* gives money to *B* to carry to *C*, yet *C* shall have debt, count, *Lib. Intr. 159. sec. 1.* for the delivery was for his benefit.

Outlawed person.

Outlawed person shall not have debt, 16 *Edw. 44. 7 Hen. 4.1. pl. 6.* nor other Action; for he that will not obey the Law, ought not to receive benefit by it.

Against

Against whom Debt lies.

An Abbot shall be charged for Debt due by Abbot.
him which enters into Religion, *Nat. br.* 121. *O.*
5. *Hen.* 5. 8. *pl.* 18. into the house whereof he is
Abbot; for the person himself cannot be charged,
and the Abbot takes into the Covent *cum caret*
visua.

But the 45 *Edw.* 3. 10. *pl.* 1. to the contrary;
quare: but it seems here as not Law.

If Accountant be found in Arrearages, debt lies Account-
against him; for here is a duty created by ad- ant. +
judging him in Arrear.

Debt at the Common Law lay against the Admini-
Committees of the Ordinary; but this was by the strator.
name of Executors, and only for goods which
came to their possession, 38 *Edw.* 3. 26. 42 *Edw.*
3. 2. *Coke* 9. *part.* 39. *B. Hensloes case*.

But by 31 *Edw.* 3. *cap.* 11. they are chargeable
by the name of Administrators, in the same man-
ner as Executors are, 38 *Edw.* 3. 2. *pl.* 3. 41 *Edw.*
3. 2. *pl.* *Coke* 9. *part.* 39. *Hensloes case*, *viz.* by
shewing how.

Plene administravit special, *No. Lib. Intra.* 269.
B. a good plea for Executors or Administra-
tors.

A Recovery against one Administrator upon a
nihil dicit is no plea in debt against all, *Hill.* 38
Eliz. Com. Ban. Furthow versus Furthow; for
they are all liable, and it may be there was no sa-
tisfaction upon the recovery.

If an Administrator waste the goods, and after
the Administration is dissolved and granted to
another,

another, Debt lies against the former, *Coke 6. part. 18. & 19. Packmans case*; for at the time of the wasting he was Administrator, and chargeable.

A being Executor of his own wrong takes Administration, *quere* how he shall be sued, *Groske 127. pl. 91.* It seems as Administrator, for in the other condition he was but a *tort Feoffor* upon the matter.

Assign.

Termor assigns his term to another, the Lessor shall have debt against the Assignee, *Coke 3. part. 25. B. Walkers case*; for by the Assignment here is a privity created.

Joynt-
tenant.

If there be two Joynt-tenants of a Term, the one assigns to B, the other dies, debt lies for the rent against the Assignee, and the Executor of the dead for rent after his death by survivor; for it shall be mischievous to compel the Lessor to bring several Actions for one thing. *Mich. 14 Jac. Ban. Regis, Bayliffes and Burgeffs de Ipswich's case.*

Attorney.

If an Attorney suffer another to follow any matter in his name, he forfeits 20 l. and the party grieved shall have Debt per the Stat. of 3 Jac. cap. 7. This Statute was made to prevent toul practice.

Attainder.

Debt lies against a person attainted, *Mich. 38, & 39 Eliz. Com. Ban. Banister & Trussells case, No. Lib. Intra. 148. A. Quere*, what Attainder; for it seems not to be general.

Bailee.

If J. deliver money to deliver over for Merchandizing, or to give in Alms, or upon a Condition to be performed to redeliver, if the party breaks the trust, debt lies, 28 Hen. 8. *Dyer 22. pl. 135.*

pl. 135. 11 Hen. 6. 39. pl. 31. 47. ^{Edm.} 3. 9. pl. 7.
 Crooke 21 Hen. 7. 69. pl. 2. ^{pr the} Rowicke. Vid.
 antea.

If the husband give authority to his wife to ^{Husband.} make a Contract, he shall be charged by the contract made by her; otherwise not, *Nat. br.* 120. G. for such authority makes it his own contract.

Unless it be for Apparel convenient for his wife, 11 Hen. 6. 30. B. for for that he is chargeable, though he give her no authority to contract for it.

But unless it be convenient he shall not, 7 Eliz. Dyer 234. pl. 17. that is, Apparel necessary and fitting for her degree to wear.

The husband alone shall be charged for Arrearages of Rent-service Arrear in his time, *Nat. br.* 121. C. Crooke 125. pl. 83. for the Land of his wife after her death.

And so of a Rent-charge, *Coke* 4. part. 49. B. 26 Edm. 3. 64. issuing out of his wives Land.

But for an Obligation made by the wife afore coverture, he shall not be charged after the death of the wife, *Nat. br.* 121. C. 120. F. 49 Edm. 3. 25. B. 20 Hen. 6. 22. for that is but a thing in action.

Unless recovery be had upon it during the life of the wife, *Nat. br.* 121. C. for by the recovery it becomes a duty.

A woman covert being a sole Merchant, may be sued in London by the custome of the City without the husband; but not in *Com. Ban.* 9 Edm. 4. 3. because that Law extends not out of the City.

If A and his wife covert by the name of his wife

Wi. Cris.

+

wife sole are obliged, it lies not against the wife, because it is a ^{vas} obligation as to the wife, 14 Hen. 4. 30. pl. 39.

Husband and wife are bound, the husband alone shall be sued, because it is void against the wife, 43 Edw. 3. 10. pl. 31. 45 Edw. 3. 11. pl. 7. 3 Hen. 4. 1. pl. 4. but good as to the Husband.

Husband
and Wife.

Debt lies against the husband and wife, for rent upon a Lease made to the husband and wife, 45 Edw. 3. 11. pl. 7. in respect of the interest the wife may have in the term.

So if it be covenanted or agreed that they double the rent, 45 Edw. 11. pl. 7. for this is, as it were a new rent reserved.

But not if it be with a *nomine pene*, 45 Edw. 11. pl. 7. for then he must hold him to the penalty, which shall not fall upon the wife. 2

When a woman in debt takes a husband they both shall be sued, Coke 5. part. 36. A. 12 Hen. 4. 1. pl. 1. Nat. br. 120. F. for the marriage makes it both their deeds.

Conusor.

Debt lies against a Conusor of Statute Merchant, Staple or Recognizance, Nat. br. 122. D. 11 Hen. 6. 49. pl. 7. Coke 3. part. 15. Harberts case, 36 Hen. 6. 2. pl. 2. 22 Eliz. Dyer 369. pl. 32. 39 Hen. 6. 3. pl. 5. for here is a duty. *vid. antea.*

Customer.

Debt lies against a Customer after *Liberate* delivered to him to pay the sum to the party, if he hath Affets, Nat. br. 121. F. else not.

So after a Tallee delivered to pay the party, 27 Hen. 6. 9. pl. 1.

So against a Collector of Tenths and Fifteens, 37 Hen. 6. 15. pl. 5. granted by Parliament.

Debt

Debt lies against an Enfant for Tabling and Enfant.
Apparel, 18 *Edw. 4. 3. A.* for these are necessary *7ⁿ.*
for the support of the Enfant.

For Rent upon a Lease for years, 21 *Hen. 6. 3. 1.*
B. upon the words yielding and paying, which
make it a duty.

For an Escape, if he be a Goaler, *Doct. & Stud.*
147. B. for the sum for which the prisoner was
committed to him.

For a thing due to one as Executor, *Coke 5.*
part. 27. B. Russels case.

Debt lies against an Executor although he be Executor.
not bound, 45 *Edw. 3. 17. pl. 4.* because he is in
place of the Testator, who was bound, and hath
the estate chargeable. †

Debt by the Daughter against the Executor of
her Father, which had levied aid to marry her,
per Westm. 1. cap. 35. Nat. br. 83. A. & 122. G.
and had not paid it to her to whom it properly be-
longed.

Debt lies against Executors of the Ordinary,
which will not deliver the Administration to ano-
ther, *Nat. br. 120. D. Com. 280. A. vid. ante* to
whom they belong.

Debt lies against an Executor of an heir, *Lib.*
Intr. 172. C. sect. 4. 18 Eliz. Dyer 344. pl. 1.
where the heir is bound.

Against an Executor of a Sheriff, for not re-
turning a Knight of the Parliament duly elected,
23 *Hen. 6. cap. 15.* for damages are to be reco-
vered, with which the Executor is chargeable, if
he have Assets.

Debt against an Executor of his own wrong,
Coke 5. part. 30. Coulters case, & 33, & 34. Reads
case;

case; for he hath made himself liable by meddling with the estate; which was chargeable.

And the Count was general, although he took Letters of Administration afterwards. *Quere, & vid. antea.*

Executor shall not be charged upon a surpluse of an account made by the Testator, *Coke 9. part. 87. A. Pinchons case*, because the Testator may wage his Law, *29 Edw. 3. 26. 22 Hen. 6. 41. 38 Hen. 6. 6. 14 Hen. 6. 24.* that he owed nothing upon the Account, which would have been a good bar to the Action.

But if an Executor assign Auditors they shall be charged in debt for the surpluse, *10 Hen. 6. 24. pl. 84.* because there they submit to the Account, and stand upon their justification.

If an Executor account before Auditors, debt lies for the Arrearages, *2 Hen. 4. 13. pl. 2. 19 Hen. 6. 5. A. Fortescue*; for by his Accounting he submits to pay what shall be found arrear.

An Executor shall not be charged for Arrearages found due upon an account before the same party to whom he is to account; *Lib. Intra. 149. B. sect. 3.* for this is as if no account had been, and is but a voluntary act, and not binding.

But for Arrearages before Auditors he shall, because Auditors are Judges of Record, *per Westm. 2 Lib. Intra. 149. B. Sect. 5.* see the Count there.

Debt against an Executor for Arrearages of an Annuity due in the use of the Testator after it is determined, *Lib. Intra. 151. C. sect. 1. 45 Edw. 3. Execution 71.* because then he cannot distrain.

In

In Debt against an Executor the pleading of an Outlawry in the Testator no good bar, 14 *Hen. 6.* 14. 21 *Hen. 6.* 3. *quare*, 3 *Hen. 6.* 17. for to plead it generally is not good, for it might be reversed before his death.

But an Outlawry at the time of the death is a good bar, or where he was a Villain to the King, 8 *Edw. 4.* 6. *pl. 7. Doct. & Stud.* 11, 12. 36 *Hen. 6.* 27. *pl. 38.* for there he died in a disability to sue.

Debt lies not against an Executor upon an Escape suffered by the Testator, unless Judgment be given against the Testator, 10 *Eliz. Dyer* 271. *pl. 26.* 15 *Eliz. Dyer* 322. *pl. 15.* 41 *Affize* 15. *Coke 9. part. 87. A.* for that proves the escape, and makes a duty to the Testator.

It lies not against an Executor upon a Tailor enfealed by the Testator, 12 *Hen. 4.* 23. 25 *Edw. 3.* 40. *pl. 9.* for this makes a duty acknowledged.

It lies not upon a simple contract of the Testator; but if he plead in barr, and it be found against him it shall, *Com. 182. A.* 10 *Hen. 6.* 24. for there he wants his advantage which the Law gives, and stands upon his justification.

But in *London* by Custom 1 *Edw. 4.* 6. it lies.

Lessee for years grants his Term, his Executor shall not be charged for Rent due after his death, *Coke 3. part. 24. A. Walkers case*; for he died not possessed of it. *Quere tamen.*

Debt for one retained according to the Statute of Labourers lies against the Executor without specialty, for the detainer makes the duty, 2 *Hen. 4.* 14. 4 *Hen. 6.* 19.

Goaler.

Goaler refusing to receive one committed by the Colledge of Physicians forfeits double the Fine, *per Marlebridge 1. cap. 9. Q. the Stat.*

Heir.

If a man levy Aid for the marrying of his daughter, and dies, if his Executors have not sufficient, Debt lies against the Heir, *Nat. br. 83. A. per Westm. 1. cap. 35. Nat. br. 122. G.* for this is for the advancement of the Family.

Debt lies against an Heir upon the obligation of his Father, if he hath Assets by descent, and be bound, *Nat. br. 120. C, & I.* otherwise not; for generally Executors are to pay debts.

But if he alien the Assets before the Action brought, he shall not be charged, *Coke 5. part. 60. A. Regist. orig. 140. A. 27 Edw. 3. 7. B. 10 Hen. 4. pl. 14. 19 Hen. 6. 46. pl. 95. 42 Edw. 3. 10. pl. 12. 48 Edw. 3. 32. pl. 22.* for it was the Latches of the party that brought his Action no sooner.

Unless it be fraudulent to deceive Creditors, *Coke 5. part. 60. Gooches case*; for the Law will not countenance fraud.

And if they be heirs in Gavel-kind, they shall all be charged as one heir, *7 Eliz. 239. pl. 39. Dyer vid. the Count, Lib. Intra. 208. D. 11 Edw. 3. Debt 7.*

But if all alien but the eldest, he shall be charged sole; for he is chargeable in respect of his Assets.

The Count against an heir, *Lib. Intra. 172. B. sect. 1. No. Lib. 126. B.*

The Count needs not shew that he hath assets, for it shall be intended, unless the contrary be shewed, *18 Eliz. Dyer 344. pl. 2. 11 Hen. 6. 2. pl. 6.* and if he have not, he may plead *riens per descent.*

For

For nothing by descent in Fee-simple is a good bar by him, *Lib. Intra. 172. B. Sect. 1.* the day of the purchase of the Writ.

But debt lies not against an heir upon a Statute-Merchant, Staple, or Recognizance, because he is not bound, *Coke 3. part. 15. A. Harberts case*; but the Lands are bound, and may be extended.

Goaler suffers an escape, his heir shall not be charged, *15 Eliz. Dyer 322. pl. 25.* for this is a personal wrong, and only damages recoverable.

Grandfather, Father, and Son, or Father and his two Sons, or Grandfathers two Sons, who have two Sons, the heir mediate shall be sued in debt as well as if they were immediate heirs, *22 Dyer 368. pl. 14. 7 Eliz. Dyer 239. pl. 39.* that is, in case the heir immediate die, for the heir mediate is bound by the word Heir.

A Right shall not be Assets, for it is a disputable thing, and no certainty of it to be reduced into possession. D :

Disseisee obliges him and his heirs, and dies; this is not Assets, for it is but a Right descended, *Pasch. 6. Jac. Com. Ban. Molineux versus Malineux*, for his Ancestor died out of possession. What shall be Assets to the Heir.

Right without an estate in Possession, Reversion, or Remainder, is not Assets, until it be reduced into possession, *Coke 6. part. 58. Bredmans cases*, and then it shall release to the time of the death of the Ancestor.

Land in ancient demesne shall be Assets, *7 Hen. 4. 14. pl. 11. Q. to whom, and where pleadable.*

Copyhold Land is not Assets to the heir, X

Coke 4. part. 22. A. for it doth not descend, but depends upon the Lords admittance.

If an heir alien *bona fide* before the Action brought, it shall not be Assets, *Coke 5. part. 60. A. Gooches case, 27 Edw. 3. 78. pl. 16. 10 Hen. 7. 8. pl. 17. 19 Hen. 6. 46. pl. 95. 42 Edw. 3. 10. pl. 12. 48 Edw. 3. 2. pl. 22. Vid. antea.* for he is not tied from selling the Land.

If Land descend to the heir, although he enter not, yet it is Assets, *42 Edw. 3. 10. pl. 12.* for he might have entered, and may do when he will.

the Grandfather makes a Feoffment in Fee to the use of the heir of his body and dies, *per 26 Hen. 8.* the Father enters, and obliges him and his heirs, and dies, *quare, 182 Maria Dyer 111. pl. 46.* whether the Grandchild be bound.

A Reversion expectant upon an estate Tail is not Assets, because it lies in the will of Tenant in tail to dock and barr it at his pleasure, *Coke 6. part. 58. B. Bredimans case, & 42. A. Mildmays case. Q.* if it be Assets when it happens.

Franktenement descendible expresse is not Assets, *Coke 10. part. 98. A. Seymors case;* for it is an incertain estate.

Rent-seck descendible is not Assets until seisin of it, *Coke 6. part. B. Bredimans case;* for before seisin he hath no estate in it.

If the heir had Assets in debt brought against him, and afterwards Assets come to his hands, the first judgment is no barr of the Action, *19 Hen. 6. 37. A. Markham;* because there was no satisfaction made, which may now be by matter *ex post facto*.

The

The profits taken by the heir at the time of the descent are sufficient, and if this be shewed to the Court, and the heir cannot deny it, there shall be a general judgment against him, *per Dyer 18 Eliz. Dyer 344. pl. 1.* to pay the debt and damages *quod querens recuperet.*

The heir confesses the action, and says, that he had nothing but a Reversion descended to him, there the Plaintiff shall have judgment to recover upon the said Reversion, and the Debt to be levied when it comes in possession, and the Plaintiff shall have a special Writ of extent, *23 Eliz. Dyer 373. pl. 14.* mentioning the special matter.

If the Father recover, and Error be brought against the Son, and a recovery against him, he shall not render damages, unless he hath Assets of Land in Fee-simple from his Father.

If one be robbed, he shall have debt against the Hundred. *Hundred, per 27 Eliz. cap. 13. antea.*

Debt lies against a Lessee at will for rent during the Term, *Coke 5. part. 10. antea.* *Quare,* if he hold over.

So against a Lessee for years, *Nat. br. 120. H.*

And this during the term, *Coke 4. part.*

Or after the term ended by effluention of time, *Coke 3. part. 23. B.* for rent due during the term.

By limitation ended,

Common Law, *Nat. br. 120. H.*

By condition in Law, or in deed,

Statute Law, *19 Hen. 6. 42. A. waste, Nat. br. 120. H. re-entry Coke 3. part. 23. B. Walkers case, 30 Edw. 3. 7. 17 Edw. 3. 48. & fol. 73. pl. 107.*

Life.

It lies not against Tenant for life so long as his estate continues, *Coke 4. part. 49. A. 11 Hen. 6. 14. pl. 4. viz.* for rent, for the Land is charged.

But yet by the Statute, *32 Hen. 8. cap. 37.* the Executors of a Lessor for life shall have debt during the estate for life, *Coke 4. part.* which seems but reasonable.

Master.

For.

Debt lies not against the Master upon the buying of the Servant, unless it comes to his use or by his assent, *Doct. & Stud. 137. A.* for otherwise it might be mischievous to the Master.

Ordinary.

Debt lies against an Ordinary, when a man dies intestate, *Nat. br. 120. D. Coke 5. part. 83. A. Snellings case, 9. part. 39. B. 11 Hen. 7. 12. 9 Edw. 4. 33. Danby. 18 Hen. 6. 23. com. 277. 8 Eliz. Dyer 247.* if the goods come into the hands of the Ordinary.

The Ordinary administers, and then grants Administration, yet debt lies against the Ordinary; but it was said, that such Administration ought to be alledged in the Diocess of the Ordinary, *12 Rich. 2. Administrator 21.* else it might be prejudicial to the Creditors.

But note, no Debt lies against the Ordinary after that he hath committed Administration to another, *8 Eliz. Dyer 247. pl. 73. viz.* where he never administers.

Debt was brought against the Father for the Sons Commons in a Colledge in *Oxon*, although the Father had delivered it to the Tutor of the Son, *Pasch. 9 Jac. Ban. Regis, St. Johns in Ox-ford* against *Brickenden*; for the Father, and not the Tutor, is liable; yet *quare*, for this is not usually practised.

Debt

Debt lies against him that becomes pledge Pledge. without deed, *Nat.br.122.K. 18 Edw.3.13.pl.7. Finchden*, if the principle pay it not.

A borrowed of *B* 20*l.* to pay it at *Michaelmas*, at which day *D* prays *B* to take him for his Debtor, and he gives him day over, and *D* obliges him to pay it by one Tally ensealed; Debt lies not against *D*, because *A* was not by this discharged, 44 *Edw.3.21.pl.23.* and so he may recover one Debt twice, if *D* should be chargeable.

A Purveyor contracts for fat wares for the King, Purveyor. and makes a Bill of receipt to the use of the King, and for this obliges himself to pay it, but seals it not; he shall be charged by *Assumpsit*, and the King by Debt, and by no other way, 8 *Eliz. Dyer 230.pl.56.* in an Action upon the Case upon his promise only; for it is the Kings Debt, and not the Purveyors.

Debt lies against a Receiver, which takes more Receiver. than he ought, per 7 *Edw.6.cap.6. Lib.Intr.191. B. sec.1. com.201. Stradlings case*; for that shall be accounted money borrowed only.

An Abbot shall be charged with the borrow- Successor. ing of his predecessor, if it come to the use of his house, *Nat.br.121.K. Lib. Intr.152.A. sec.1.* but not otherways.

The Count shall be general. *Coke 7. part.10.B. Ughvreds case*, and he needs not shew it, for it shall be so intended.

Præcipe societati Lombardiorum London mercatorum de Florentia, and this was good, 19 *Hen.6.80.pl.11.* for they are in nature of body Politick.

Sheriff
Under-
Sheriff.

Debt upon an escape of one in execution upon an account, it lies *per Westm. 2. cap. 11.* and as of the Debtor, *per 1 Rich. 2. cap. 12.*

For not returning a Knight of the Parliament, *per 23 Hen. 6. cap. 15.* the Count *com. 118.* *Buckleys case, Lib. Intra. 186. A. sect. 1. antea.* for the penalty given by the Statute.

A Sheriff takes an obligation for Appearance of the Defendant, which doth not appear; yet debt lies not against the Sheriff by the Plaintiff, *Tvin. 13 Jac. Com. Ban.* if he return a *Cepi*; but an Action on the Case lies, and the Sheriff may bring his Action upon the Bond.

Outlawed
person.

It lies against a person Outlawed, *Mich 38 & 39 of Eliz. Com. Ban. Banister versus Trussel, No. Lib. Intra. 248. A. 7 Hen. 6. 10.* for another debt, or in another Action. *Q.*

For what things Debt lies.

Lent.

It lies for money lent to another, *Nat. br. 119. G.* this most properly.

For a Horse lent till such a day, and then to give 10 *l.* for him, or the Horse: after the day debt lies for the one or the other, *Nat. br. 121. B.* at the election of the Plaintiff; but before the day, or at it, it was in the Defendants election.

A borrowed money for the Servant, Debt lies not against the Master, unless it came to his use, or was borrowed by his assent, *Doct. & Stud. 137. A. antea.*

Bailment.

Upon a delivery to redeliver debt lies, if it be not redelivered. *28 Hen. 8. Dyer 22. pl. 135. 11 Hen. 6. 39. pl. 31. 4 Edw. 3. 9. pl. 7.* although the Receipt be not by deed.

Upon

Upon a delivery to redeliver over to another, if it be not performed, debt lies, 28 Hen. 8. *Dyer* 22. pl. 135. 11 Hen. 6. 39. pl. 31. 42 Edw. 3. 9. pl. 7. Mich. 40. 41 Eliz. com. Ban. Britons case: for no property was altered.

But 6 Hen. 4. 8. pl. 33. if *A.* ought to pay an Annuity in fee to *B.* and deliver money to *C.* to pay it to *B.* yet *B.* shall not have debt against *C.* for there is no trust or privity between them.

Lease for life of another debt lies not for the Contract. Rent during the term. *Coke* 4. part 49. *A. Ognels* case. *vid. antea.* it lies by *cestuy que vie.*

But by the 32 Hen. 8. cap. 37. the executors or administrators shall have debt during the estate for life, *Coke* 4. part 49. *A. antea.*

But after the estate ended, debt lies, *Coke* 4. part 49. *A.* for then there is no other remedy.

So it is by the death of the Lessee, *Coke* 4. part 49. *A. antea.*

Or by Limitation of the term.

Or by condition,	{	in deed, 39 Edw. 3. 22. pl. 11. Nat. br.	{	Statute Law. } 19 Hen. <i>Antea.</i> Common } 42. <i>A.</i> Law. } waste.
		120. H. <i>Coke</i> . 23. B. 6 Hen. 7. 3. 30.		
		Edw. 3. 7.		
		in Law,		

Lease for years by a Bayliff the Master shall have debt for the Rent, *Lib. intra.* 174. *D. sect.* 3. for it is accounted the Lease of the Master; for no interest passeth from the Bayliff being but an instrument only.

A Corporation made a Lease for years rendring to *P.* 10 l. at Mich. or 20 days after, after verdict, it was moved in arrest of judgment that they shewed

shewed not the deed, *sed non allocatur*, because it was after verdict, and so the Lease was found, 2 good, although they had brought debt for the rent due for 6 years ended at *Mich.* to *P.* and not 20 days after, for the rent was due at *Mich.* *Mich. 9 Jac. Ban. Regis. Baldry.* defendant in debt by the Corporation of Brewers.

Bargainee of a reversion, in debt for rent, ought to shew in what court the Deed was enrolled, *Mich. 9 Jac. Ban. Regis. Welby & Purley.* by which the reversion was granted; for the enrolment is traversable, and must be punctually set forth, and the enrolment may be in divers places, for that the debt cannot take notice where.

Agistment Debt lies for the agistments for Cattel for so long time as they went in such Lands, *Lib. intra. 150. A. sect. 1. count Lib. intra. 151. A. sect. 1.* but then he must shew the certainty of the time and sum.

Marriage-money. *A.* promises 20 *l.* to *B.* to marry his Daughter; *B.* shall have debt, *Nat. 120. K. count Lib. intra. 178. A. sect. 1. 37. Hen. 6. 8. pl. 18. 16 Hen. 3. prohibition 22.* for the consideration creates a duty if performed.

But if he promise 20 *l.* in marriage with his Daughter, he shall not have debt, but shall sue in court christian, *Nat. br. 50. S. 16. Hen. 3. pro 22. vide Regist. 46. B. Q. differentiam.* It seems because no Money is promised him.

But if it be by deed, then it is otherwise; see 45 *Edw. 3. 24.* for the Deed is triable at the Law, though the Marriage be not, but in the Spiritual Court.

Brañon,

Bracton. Lib. 5. cap. 16. Sic de rebus datis *Regula.*
vel promissis ob causam matrimonii principaliter, &
sic de rebus que accidunt matrimonio; ut si pecunia
promissa fuerit, ob causam matrimonii, quia ejus-
dem juris id est, & jurisdictionis esse debet accesso-
rium cuius est principale. The Marriage is the prin-
 cipal, and the Portion the accessory.

Upon Partition betwixt two, one promiseth *Partition.*
 the other 20*l.* for equality of partition, debt lies
 for it, *Nat. br. 122. H. 14 Edw. 3. Debt. 137.*
 if it be not paid, for the promise upon the parti-
 tion made it a Duty.

If a personal thing be leased, rendring rent, *Rent upon*
 debt lies for it, *Coke 3. part 22. A. Walkers case.* as *a personal*
 a Horse, Sheep, or the like, the loan implies a *thing.*
 duty upon the contract.

An Attorney shall have debt for his fees, and *Salary.*
 for fees of counsel, and costs of suit, *Nat. br. 121.*
L. Count Lib. intra. 202. B. secti. 6. vid. antea.

A Counselor shall have debt for his fees, 3
Hen. 6. 33. pl. 26. 21 Hen. 6. 4. pl. 6. but then
 he ought to count that he was of his counsel, or
 was ready, 37 *Hen. 8. B. Q.* for a Counsellors
 fee is not certain and is rather *honorarium* than
mercenarium.

But 31 of *Hen. 6. 9. B. Fortescue.* Serjeant at
 Law shall not have debt for his fees, and is not
 bound to be retained without. *Q.* for he is bound
 to be of counsel till he receive his fee.

A Servant shall have debt for his salary, *Coke* *Servant.*
9. part. 87. 3 Hen. 6. 42. 11 Hen. 6. 48. al-
 though it be to do his service beyond the sea, *Nat.*
br. 120. E. for the labourer is worthy of his hire
 whereever the work be done. And beyond sea it
 is

is done with more hazard to the servant.

The Count, *Lib. intra. 201. D. sect. 1.*

Steward.

Steward of a Court retained by word shall have debt, 8 *Eliz. Dyer. 248. pl. 79. Coke 4. part. 30. A.* for his salary.

Count for a Chaplain for his fee promised, *Lib. intra. 153. B. sect. 11.*

Count for a Priest, *Lib. retained circa sacra, intra. 202. B. sect. 5.*

Count for one retained, &c. *Lib. intra. 203. B. sect. 12. viz. a servant according to the Stat.*

Surgery.

If *I.* promise to a Chirurgeon 40 *s.* to cure *B.* he shall have debt, because it is a good contract, 37 *Hen. 6. 9. A. Moyle.* for it ariseth from charity, and is for the preservation of man.

Tabling.

Debt lies against him that tables with me, 27 *Edw. 3. 87. pl. 37. 9 Edw. 4. 1.* The count *Lib. intra. 153. B. sect. 10. & 177. D. sect. 1. viz.* upon a contract as a sojourner, but not as a guest as it seems. *Q. tamen* if not upon a *quantum meruit*,

Goaler shall have debt for tabling of a prisoner, *Coke* against the prisoner. 9. *part. 87. B. 28 Hen. 6. 4. pl. 21.*

Inn-keeper shall have debt for Lodging or Victual, 39 *Hen. 6. 18. pl. 24.* provided for his Guests; for here the Law makes the contract.

Tabling & Phylick.

A Physician shall have debt for tabling and phylick, *Lib. intra. 187. B. sect. 1. vide* the count there, upon a *quantum meruit*, if there be no special contract.

Taylor.

If *I.* put my Cloth to a Taylor to make a garment, he, *viz.* the Taylor, shall have a special action for making the garment, for the putting of the

the cloth is a sufficient contract in Law, *Coke* 8. part. 147. *Carpenters* case, to bring the action upon

But not a general action of debt without declaring upon a contract in deed, *ibid.*

If I sell a Mannor, Debt lies for the money, *Vendition* yet I. shall not have it before Livery, 37 *Hen.* 6. 8. pl. 18. *Prisot.* 2. for before the Livery the contract is not perfect.

I bargain for a Horse, Debt lies for the money, 14 *Hen.* 8. 19. br. contract, 15. *Coke* 4. part. 94. B. *Slades* case. upon the contract in Law.

If a man makes an obligation for a Debt due by contract, debt lies not upon the contract, *Nat. br.* 121. M. *Coke* 6. part. but upon the Obligation; for by the taking of it the contract is gone.

Because the obligation drowns the contract, for the obligation is of a higher nature.

Upon an *emisset* several ways, the count, *No. Lib. intra.* 125. B.

If I. give authority to my Bayliff or Servant *Servant.* to buy for me, debt lies against me, *Nat. br.* 120. *G. Doct. & Stud.* 137. A. 6. *Eliz. Dyer.* 130. pl. 56. 2 *Rich.* 2. Debt 13. otherwise not; but with my authority the act of the Bayliff or Servant is accounted the Masters act.

And so if he bought it without command, if it come to the use of the Master by his assent, *Doct. & Stud.* 137. A. for the assent afterwards doth make it his own act *ab initio.*

And likewise if he bought it in his own Name, and it comes to the use of his Master, it lies against his Master, *ibidem.* for the Masters making use of it shews his assent, and that it was for his benefit. So

So if the Bayliff which used to sell, sold a Horse for twelve bushels of wheat, this is good, and the Master shall have debt, 27 *Affiz. pl. 5.* for it is accounted the masters sale.

The Servant sells, the Master agrees, this is the sale of the Master, and debt lies. 27 *Hen. 8. 25. B. Fishams.* otherwise not, except he used to sell; for it is not incident to a servant, as a servant only, to buy or sell for his Master.

A Factor receives money, and gives a bill of exchange, if the Master accept the Bill, by it he becomes debtor by the custom of Merchants. *Trin. 43 Eliz. com. ban. per legem mercatoriam*, and for the advancement of Trade.

Wife.

Wife

The wife buyes a thing, the husband agrees, this is the emption of the husband. 27 *Hen. 8. 25. B. Pittiams.* but if he assent not, he is not bound, for she is no more than a servant in this respect.

Voluntary
per Crier.

One condemned taken in *Westminster-Hall*, kept by a Crier assigned, which suffers him to escape, debt lies not, 1. because it was no prisoner; 2. because he had no command by Writ, 33 *Hen. 6. 55. pl. 50.* and so not chargeable by Law; for he is not an Officer to such intent.

Sheriff.

X

If a Prisoner escape by assent, although the Sheriff take him again, yet debt lies. *Coke 3. part 44. Boytons case. 19 Hen. 4. 10. viz. assent of the Sheriff or Gaoler;* for thereby the debt is discharged as to the prisoner.

Unless the Sheriff brought one *per habeas Corpus*, then if he had him at the day, it sufficeth. *Coke 3. part 44. Boytons case.* yet he ought not to set him at large in the mean time.

Unless

Unless the party be in execution, *Coke 5. part. 89. Frosts case. 7. Hen. 4. 30.* for then debt lies against him ; but if it be but upon mean process, an action of the case only lies to recover what the party is damnified.

Or upon a *capias ad satisfaciendum*, although the Writ be not returned. *Coke 3. part. 52. Rigways case.* If the party be taken upon it ; for then he is in custody.

And if it be returned, and he had not the body, debt lies, *7 Hen. 4. 11. br. return 107.* for it shall be intended that he let him escape.

A writ of privilege for a Burgeſs of Parliament, the Sheriff suffers him at large, debt lies not, *36 Hen. 8. Dyer 6. pl. 17. 1 Jac.* for this is but a mean process.

If one be taken by a *capias utlagat.* after the year and escape, debt lies. *Coke 5. part. 89. Frosts case. 88 B. Garnons case. vide 7 Hen. 6. 5.* in forgery ; for the process is well executed as to the Sheriff, and he ought not to suffer the escape.

Negligent
escape per
Sheriff.

The ancient Sheriff makes no mention of one in execution in his indenture delivered to the new Sheriff, of prisoners in his custody ; this is an escape in the old Sheriff, but not in the new ; for the new is not charged with him : but if the old Sheriff die, the other ought to take notice of the prisoners ; but if the escape be in the vacancy, *viz.* before the new Sheriff is elected and sworn, debt lies not. *Coke 3. part. 71 & 72. Westbys case. 10 Edw. 3. 375. pl. 28.* for before he was not chargeable, for he was no offender in Law.

If one be in execution, yet debt lies against the Sheriff, *7 Eliz. Dyer. 241. pl. 47. 16 Edw. 4. 3. pl. 7. Q. de boc.*

The

The Plaintiff and chief Justice assent for one time that the prisoner shall go at large, and after he suffers an escape, debt lies. 10 *Eliz. Dyer.* 275. *pl.* 46. for this was not a finall discharge of the prisoner. *Q.*

A *capias* upon a recognizance in Chancery, the party taken escapes, debt lies, *Coke* 8. *part.* 142. *Druries* case; for this is in nature of an execution.

The Writ was that 6 were in execution and escaped, and the doubt was whether they might count for one only, and by the better opinion it was good, *Crooke.* 26 *Hen.* 7. 67. *pl.* 11. *Q.*

Marshal.

If one be Marshal of the prison, whether it be by right or wrong, debt lies against him, 39 *Hen.* 6. 33. *A.* for the Plaintiff is not to examine his Title.

Count that he was in execution in C, and removed to the upper Bench prison, and committed to the Marshal, which suffers him to escape, debt lies, 38 *Hen.* 6. 28. *pl.* 10. for it is all one as if he had been originally committed thither.

Deputy.

Deputy of a Marshal suffers an escape, debt lies against him, 11 *Eliz. Dyer.* 278. *pl.* 5. *viz.* the Marshal himself. *Q.* if not against the Deputy.

Mayor *de*
Staple.

Debt lies against a Mayor of the Staple upon a recognizance taken before him. 5 *Hen.* 6. 11. *Hen.* 6. 49. *B.* 12 *Hen.* 6. 2. *pl.* 9. if he suffer the Prisoner to escape.

The count, *Lib. intra.* 171. *D. sect.* 6.

Lord *de*
Franchise

Dean and Chapter of *Pauls* having return of Writs, and making a Bayliff that suffers an escape, Action lies not against the Dean and Chapter, because

cause they are not Bayliffs, *Pasch. 14 Eliz. Com. Ban.* but against the Bayliff, for he is the Officer the Law takes notice of. *Q. tamen.*

For a *Nomine pæne* granted, this is casual; yet debt lies for it, *Nat. br. 120. M. 2 Hen. 8. 8. Dyer, 24. pl. 149*; for it is a duty *ab origine*, if forfeited. Grant pænalty.

And this is but *hac vice*, if there be no other words to shew the continuance of it, *32 Hen. 6. 10. A. Billinge.*

And so upon any grant *hac vice* certain or uncertain. *Q.*

2. Annuity or Rent-charge granted for years, debt lies not during the term. But the *5 Edw. 4. 42 B.* debt lies; and it seems this is Law; if it lie not, it seems it is because the Grantee may distrain and charge the Land. Annuity.

But against a customer it lies, if it be to be paid out of the customs of *London* after delivery of a *Liberate*, *Nat. br. 121. F.* for then it is a duty vested.

It lies for Executors or administrators of the Grantee *per Stat. 32 Hen. 8. cap. 37. viz.* of an Annuity or Rent-charge.

And after the term ended, it lies for the Grantee, *Lib. Intra. 151. C. sect. 1.* for then there is no other remedy for it.

3. Annuity for life, debt lies not for this during life, *19 Hen. 6. 42 A. 37 Hen. 6. 35. A.* But a Distress or a Writ of Annuity, and the Land is chargeable. For Life.
An.

But against a customer it lies, *Nat. br. 121. F. antea*; for his person is chargeable *ratione officii*.

Also if a Parson or Prebend, &c. hath such annui-

ty and resigne or be dispossessed, it lies for the arrerages, *Coke 4. part. 48. B. Ognels case.* For by his resignation it is meerly a personal thing, and the Land is not chargeable.

So his Executors shall have debt by the common Law, *Coke 4. part. 49. A 22 Eliz. Dyer. 37. pl. 62. Coke 10. part. 61. B.* For it is accounted part of the Testators personal estate.

But if it be a Rent-charge seck or service, debt lies not for any so long as the Estate continueth, *Coke 4. part. 49. A. Ognels case.* For there the person is not chargeable.

Although it have continuance but to a special intent, *Coke 7. part. 39. B.* For the Law takes not notice of such intents, but looks on it as upon a continuing Estate.

But after it be determined, debt lies for the party or his Executor, *Coke 4. part. 49. Ognels case. Nat. br. 121. E. Coke 4. part. 49. Ognels case. 27 Hen. 6. 1. pl. 4.* because the realty is resolved into the personality, and so the person chargeable.

4. Annuity in Tayl general or special, debt lies not during the annuity, *Coke 4. part. 48. B.* for the former reason.

So of a Rent-seck, service or charge, *vid. ante.*

But if the estate be determined, *quare* at the common Law.

But by the 32 Hen. 8. cap. 37. the Executor or Administrator shall have debt for the Arrerages.

Annuity in fee during the annuity, debt lies not, *Coke 4. part. 48. B. 6 Hen. 4. 7. pl. 33.*

Unless

Unless it be in a special case, as when a Parson or Prebend resignes, *Coke 4. part. 49. A. Nat. br. 121. D. 19 Hen. 6. 41 & 42. Nat. br. 121. H. antea.* For there the estate is determined as to him that resignes.

So if a Parson dies, his Executors shall have debt, *Nat. br. 120. L. Coke 4. part. 49. A. 37. Hen. 6. 8. pl. 18.* For there is no other remedy for to recover it.

And by the 32 Hen 8. cap. 37. the Executors or Administrators of every one shall have debt.

But after the Annuity determined every one shall have debt by the common Law. *Coke 4. part 49. A. 45. Edw. 3. 45. execution 71.*

Judgment given.	In Court of Record.	Superior	Parliament.
			Ban. Regis.
		Inferior by	Chancery.
			Com. Ban.
			Exchequer.
	Not of Record.	Court Baron	Prescription.
			Custom.
			Patent.
			Common-
			Right.
	Out of Court	Statute.	For principal.
			County. For damages.
			Ancient and losses.
			Demefn. For Fine or A-
			in any merciamment.
			Mannor.
			Marchant.
			Staple.
			According to
			23 Hen. 8.
			P 2

Recognizance.

Account at common Law.

Arbitrement.

By Law or Ordinance.

Judgment
given in
debt for
the prin-
cipal.

If a man brings debt upon a recovery in *com. Ban.* he ought to bring it in *Middlesex*, where the Record is, because it is the Original, upon the which the Action is brought; but a *scire facias* to execute a Judgment shall be where the original Action was brought, because it ought to follow it. *Hil. 9 Jac. Ban. Regis, Musgrave versus Wharton*; for the *scire facias* is in pursuance of it, and to have execution upon it.

Upon Arrerages recovered in a *scire facias* upon a Judgment in Annuity brought against the predecessors, debt lies upon it, *Nat. br. 122. E. 22 Edw. 4. 1. pl. 6.* for by the recovery it is become a Duty.

A Debt was recovered in a Court of Pypowers, and debt brought upon it in *com. Ban. super tenorem recordi*, and good, *7 Hen. 6. 19.* The record must be mentioned in the Count.

For dam-
ages and
costs.

If a man recover dammages in waste, he shall have an action of debt for the dammages, *Nat. br. 122. C. 43 Edw. 3. 2 pl. 5.* the count *Lib. Intra. 197. C. sect. 15.* for the recovery of them hath made them duty.

Debt lies for dammages recovered in Affize, *32 Hen. 6. 29. pl. 23.* but then this debt sued for ought to agree with the Record. See the count *Lib. Intr. 194. D. sect. 7.*

So for dammages in a Mort-dauncester, *46 Edw. 3. 25. pl. 10.*

If the Plaintiff in *com. ban.* is non-suited, and the

the Record removed by Writ of Error before the Costs paid upon the Nonsuit, the Defendant in the Writ of Error shall have debt for his costs, 29 Hen. 8. Dyer 32. pl. 5. for the Law makes them a duty.

Dammages recovered in ancient d. mesne, and the tenour of the Record was removed by *Certiorari*, debt lies upon it for the dammage, 39 Hen. 6. 3. pl. 5. count *Lib. intra*. 195. C. sect. 11. for they are become a duty.

Dammages recovered before the Mayor of Hull, debt lies there, 11 Hen. 4. 12. but not in another Court.

Debt lies for a Fine, *Coke* 8. part. 41. B. Greisleys Fine. case. 7 Hen. 6. 2. B. 2. What fine and where.

Debt lies for an amerciamient in a Leet, *Lib. Amercia-*
Intra 151. B. sect. 1. 23. Hen. 8. br. Leet. 37. ment.
The count *Lib. intra*. 151. B. for it is a duty.

Debt lies in a Court Baron, *No. Lib. intra*. 118. B. sect. 1. for a debt grown due within the jurisdiction thereof.

Debt lies upon a Statute Merchant, or Staple, Judgment
according to the *Stat.* 23 Hen. 8. *Nat. br.* 122. C. out of
11 Hen. 6. 49. pl. 7. for the Statute makes it a Court as
duty. Statute.

Debt lies upon a Recognizance it self, *Nat. Recogni-*
br. 122 C. 11 Hen. 6. 49. pl. 7. *Eliz. Dyer* zance.
306. pl. 63. The count *Lib. intra*. 192. B. sect.
1. for it is in the nature of a Judgment.

Or upon the tenour of the Recognizance,
39 Hen. 6. 3. pl. 5. 22 *Eliz. Dyer*. 369. pl.
52.

So upon a Recognizance taken before the Mayor

of Hull, 36 Hen. 6.2. pl. 2. In Hull. 2. if elsewhere.

Debt brought upon a Recognizance after the Recognizance taken, and afore the enrolment of it, and good, *Pasch.* 43 *Eliz. Com. Ban.* For the Enrolment makes not the duty.

Account
at the com
mon Law.

Debt lies upon Arrerages of Account at the Common Law, the count *Lib. intra.* 149. *A. feli.* 1.

Also a Bayliff shall have debt upon the surpluse of account, *Nat. br.* 121. *I.* 38. *Hen.* 6. 5. 19 *Edw.* 2. Debt 176. against his Master, for the Law makes it a duty in the Master.

He ought to count the place and day where the Auditors were assigned, *Hil.* 32. *Eliz. Com. Ban.* Lord *Dacres* case. before whom accompted, and the Accompt stated; for they are traversable.

But if the Lord will not hear his Accompt, he hath no remedy for the surpluse, 7 *Edw.* 3. 12. *per Herle.* For then it appears not whether any thing be due to him or not.

But it lies not by a Receiver, 38 *Hen.* 6. 5. pl. 14. *Mich.* 12. *Jac. Ban. Regis.* Countess *de Suffolk* versus *Floyde.* For a receiver is not to lay out for his Master.

But a receiver for Merchandize shall have it, 38 *Hen.* 6. 5. *Prisott & Moyle*; because he receives it for to be employed, and the Master is to stand to the gain and loss if there be any.

Arbitre-
ment.

Debt lies upon an Arbitrement, *Nat. br.* 121. *G. Coke* 9. part. 92. *B.* the count *Lib. intra.* 153. *C. feli.* 1. For an Arbitrement is a judgment by consent of both parties, and by it a duty is created.

Debt

Debt lies upon an Ordinance, or by Law, *Coke* By-laws or Ordinances.
5. part. 64. A. Q. What Ordinance.

A Pain is laid upon one in a Leet to reform a Nufance, and afterwards it is presented that it is not done, the Lord shall have debt, 23 *Hen. 8. br. Leet 37.* for the same, for it is a duty conditionally upon the non-seafars.

For a Penalty inflicted upon one in London per the Common Council, debt lies for it in *Ban. Regis. Mich. 9. Jac. Ban. Regis.* by the custom of the City, as it seems.

Debt lies for the Daughter for Ayd to marry her, *Nat. br. 83. A. & 122. G. vid. antea.* Matter in Law, as for Aid.
For the Ayd is for her advancement.

A man having an Annuity of the King, delivers a Writ to a Customer to pay it, who hath assets, he shall have debt, *Nat. br. 121.* For an Annuity against a Customer, &c. after delivery of a Liberate.
F. against the Customer, else not.

So if he deliver a Tally to a Customer. 27 *Hen. 6. 9. pl. 1.* For that is a sufficient warrant to him to pay it.

So if he deliver a Tally to a Collector of Tenths and Fifteens, 37 *Hen. 6. 15. pl. 5.* for the same reason.

Debt lies *pro rationabili parte bonorum*, where the custom gives such part, *Nat. br. 122. L. 3 Edm. 3.* Debt 156. for him that is to have such part. *Pro rationabili parte bonorum.*

The count was that the Son or Daughter which is not heir, nor preferred in the life of the Father shall have a reasonable part, and shews the

things to the value, &c. *Lib. intra.* 564. *B. sect. 1.* The value is to be shewed to reduce it to a certainty.

But shall not have this Writ, but where such custom is, 40 *Edw. 3.* 38. *pl. 13.* *Mowbray.* 7 *Edw. 4.* 20. *pl. 23.* for the common Law takes no notice of such reasonable part.

For it cannot be founded upon *Magna Charta cap. 8.* because it is but only foreprised, *Regist. orig. 141. B.* 30 *Edw. 3.* 26. *A. Seton.* and not ordained or enacted.

But other Books say it lies at Common Law, *Nat. br. 122. L. Glanvil Lib. 12. cap. 20. 17 Edw. 3.* 9. *pl. 29.* *Q. tamen;* for custom makes Law in many cases.

And the account is upon the Common Law, *No. Lib. intra.* 565. *A. sect. 2. viz. per legem terre.*

So debt lies where the custom is that the heir shall have the principal goods, 30 *Edw. 3.* 2. *pl. 9.* 39 *Edw. 3.* 6. *pl. 24.* *Ch. fol. 9. pl. 15.* for thereby they are a duty vested in him.

For a relief per Executor. Executor shall have debt for a relief, because it is but an improvement of a rent-service, *Coke 4. part. 49. B.* 34 *Edw. 1.* *Avowry,* 233. 11 *Hen. 6.* 15. *pl. 4.* and is not a rent-service.

And it is a chattel to the Executor, 34 *Edw. 3.* *Avowry,* 233. and ought to be assets in his hands.

But the Lord shall not have debt, *Coke 4. part. 49. B.* 7 *Hen. 6.* 13. For it is no Chattel to the Lord, 34. *Edw. 1.* *Avowry* 233.

Toll shall be recovered by debt, 20 *Hen. 7. 1.* For Toll.
pl. 2. but *vide librum & quare*; for it seems it is
 a duty certain.

Debt lies for Escuage after that it is assessed *per* For Escu-
 Parliament, for then it is a duty certain, *Crooke* age.
133. pl. 111.

Debt lies upon a simple Obligation; Count, Simple
Lib. Intra. 178. B. sect. 1. for there is a duty cer- Obligation
 tain. condition-
 nal.

Or upon an Obligation with a Condition.

Vide per Attorney vel servientem ad legem, fol.
174. D. Sect. 5 & 6. Q.

Debt upon a Bill to pay within a month after
 that the Plaintiff shall come from *Jerusalem*, he
 needs not give notice to the Defendant of his re-
 turn, because he is bound to pay it at his peril,
Hill. 9 Jac. Ban. Regis, Edmonds. Q.

Obligation with condition to perform Cove-
 nants, *No. Lib. Intra. 130. B. Sect. 14.*

Obligation to discharge and save harmless the
 Sheriff of all escapes of persons in Execution, a
 good breach to shew that one was in execution,
per Capias, &c. and that he suffered him to go at
 large; without shewing, 1. that he was at
 large; 2. without giving notice of it, and re-
 quest to save him harmless; 3. without shewing
 that the *Capias* was returned, *Trin. 12 Jac. Com.*
Ban. Norton versus Smyth, for the *Capias* shall be
 intended to be well executed.

Upon a single Bill obligatory and the Count,
Lib. Intra. 178. B. sect. 1, 2, 3.

Upon a Bill obligatory with condition, *Lib.*
Intr. 178. C. Sect. 4. antea.

Debt

Debt upon an obligation made in England to be paid in Flanders, *Lib. Intra. 158.C. Sect. 1.*

Debt lies upon a Tallee sealed, *Nat. br. 122. I. 2 Rich. 2. Debt 4. vide 44 Edw. 3. 24. pl. 23. antea.*

The Writ in Debt ; 1. In the County.

2. In Com. Ban.

Country. Rex, &c. *precipimus tibi quod justicies A, quod juste & sine dilatione reddat B 20 l. quas ei debet, ut dicit, & sicut rationabiliter monstrare poterit, quod ei reddere debeat, ne amplius inde clamorem audiamus pro defectu justitie, &c. Regist. orig. 139. A. Nat. br. 119. H.*

In Comitatu. Pro debito semper dicitur quas ei debet tantum, & pro catallis detinet tantum, Regist. orig. 139. B. & non ut dicit seu ut dicitur.

But for Executors it is always in the *detinet, ibidem*; for the debt is due to the Testators estate, and is only detained from the Executors in *retardationem testamenti Testatoris.*

*Admini-
strator.*

If Debt be by Administrators, all of them must be named, *Regist. orig. 140. A.* for they have a joynt Authority, which must be pursued.

The Writ shall be in the *Detinet* only, *Regist. orig. 139. B.* for the former reason.

If one recover against Administrators, and bring debt upon the Record, the Writ shall be *detinet* only, *11 Hen. 4. 56. pl. 2. vide 11 Hen. 6. 7. 16. 39.* For by *Newton, fol. 37.* *debet* imports his proper debt, being upon his own Contract, *20 Hen. 6. 5. A. Fortescue*; for they owe nothing themselves, but only do detain in anothers place.

If

If Husband and Wife bring Debt, the Writ shall be *debet & detinet eis*, *Coke 5. part. 36. A.* Husband and Wife. *Walkers case, 12 Hen. 4. 1. pl. 1. 7 Hen. 7. 2. B.* *debet* in respect of the wife, and *detinet* in respect of the husband, from whom the debt is withheld.

But the Count shall be special, *7 Hen. 7. 2. B.* and shew how, and to whom the debt became due.

So in debt against them for debt due before Coverture, *7 Hen. 7. 2. B.* in the *debet* in respect of the wife, and *detinet* as to the husband.

Bill against a Collector, after that he hath accounted there ought to be *nuper Collector*, *15 Edm. 4. 27.* for after his account he is out of his office, and cannot be called Collector. Against a Collector.

Debt per Executors, the Writ shall be *detinet* By Executors. only, although the duty accrue in their time; for it is due to the Testators estate only, and not to them, *Coke 5. part. 31. B. Hargraves case, Nat. br. 119. M. Regist. orig. 140. A.* So for goods of the Testators sold by them, *19 Hen. 8. 8. 11 Hen. 6. 36. A. 20 Hen. 6. 5. B.* and so for Rent due in their time, for the same reason.

So if they sell a thing, and take an obligation for the money, *17 Edm. 3. 64. pl. 78. 25 Edm. 3. 40. pl. 7.* for this is to the use of the Testator.

Et Regist. orig. 138. B. 9 Hen. 6. 11. B. 20 Hen. 6. 4. B. Paston.

In ancient time in such case it was in the *debet & detinet*; but not at this day, because that *debet* supposeth a property which the Executor hath not; so that it is to be noted, that ancient Pre-
sidents

sidents may be altered upon good grounds.

All Executors ought to joyn in Debt, although that some refuse the Administration, *Regist. orig.* 140.B. 22 *Edw.* 3. 19. *pl.* 8. 7. 41 *Edw.* 3. 22. *pl.* 10. 21 *Edw.* 4. 24. 36 *Hen.* 6. 8. *Coke* 9. *part.* 37. *Hensloes* case, 24 *Edw.* 3. 40.B. *Thorpe*, 19 *Hen.* 6. 31. *quare*, if they refuse to prove the Will, for then it seems they were not Executors.

Vide tamen, 38 *Edw.* 3. 9. *pl.* 7. L. where an Executor sold goods and brought Debt sole for the money, and it was awarded good without his Companions; it seems it was, because he solely made the sale. *Quere tamen*.

An Executor and an Executor of his Fellow Executor joyned in debt, and good, 7 *Edw.* 3. 261. *pl.* 22. Q.

But the 28 *Edw.* 3. 92. *pl.* 11. *Wilby*, this is not Law; for 29 *Edw.* 3. 49. 23. the surviving Executor shall have it sole, and so I conceive the Law to be.

Wife Executrix.

A Wife executrix in debt, by her and her husband the Writ shall suppose both Executors, 22 *Hen.* 6. 49. *pl.* 8. for conformities sake; for the wife cannot sue without her husband.

Feme covert Executrix shall not have debt without the husband, 8 *Edw.* 3. 330. *pl.* 48. 10 *Edw.* 3. 381. *pl.* 63. 21 *Hen.* 6. 30. *pl.* 17. *Markham*, *Regist. orig.* 140. for the aforesaid reason.

Against Executors

The Writ shall be *detinet* only, *Nat. br.* 119. M. *Regist. orig.* 139.B. *antea*.

But for Rent due in the time of the Executor, it shall be in the *debet & detinet*, *Coke* 5. 31. *Hargraves* case, 7 *Edw.* 6. 81. for it may be for the benefit of the Executor.

A man being Executor of his own wrong takes Administration, *quare* how he shall be sued, *Crooke* 127. *pl.* 91. *A.* it seems as Administrator, for that is his best condition.

It sufficeth to name them only that be Administrators, *Regist. orig.* 140 *A.* & *B.* 19 *Hen.* 6. 31. *Coke* 9. *part.* 37. *Hensloes* case, 33 *Hen.* 6. 38. *pl.* 15. in the Writ and Count.

Debt against an Executor, which pleads joynt executorship with another; they both may plead so, but the former only cannot, 29 *Edw.* 3. 11. *pl.* 32. for they are but one Executor.

Debt lies against an Executor of right and of his own wrong, 39 *Hen.* 6. 45. *pl.* 19. for the latter hath made himself liable.

But not against an Executor, and an Executor of an Executor, 41 *Edw.* 3. 13. *pl.* 3. for this would be to recover one thing twice.

Two Executors, *viz.* a Man and a Woman, administer, and intermarry, debt lies against both, 22 *Hen.* 6. 59. *pl.* 12. for the marriage drowns not the Executorship in the woman.

The Heir ought to be named, 30 *Hen.* 6. 5. *pl.* 2. Heir. in debt brought against him as heir, that it may be known in what capacity he is chargeable.

But *Regist. orig.* 140. *A.* he was named Heir in the Count only, and not in the Writ, and yet good. *Quare tamen.*

He was named Heir apparent, and it was erroneous, *Pasch.* 35 *Eliz.* *Ban. Regis* 242. *Audleys* case; for he is not chargeable during the life of his Ancestor, for the Heir is bound, and not heir Apparent.

It

Debt a-
gainst the
Ordinary,
and the
Writ.

It shall be against him in the *debet & detinet*, and not in the *detinet* only, because he hath Assets in his own right, *Coke 5. part. 36. Walkots case, Regist. orig. 140. A. Com. 441. A. Pepys case*, by intendment of Law, till the contrary appear.

Precipe A. Episcop. London. ad cujus manus bona & catalla que fuerunt B. qui obiit intestat. ut dicitur, devenerunt, quod juste & sine, &c. reddat, &c. C. solidos, quos idem B. ei debuit, & predictus Episcop. ei injuste detinet, ut dicit, & nisi, &c. Regist. orig. 141. A. Nat. br. 120. D.

Et ibidem vide the Writ against an Executor of the Ordinary, who is liable, and not his Successor, for that might be inconvenient.

But it lies not for the Ordinary, *Nat. br. 120. D. Coke 9. part. 39. Hensloes case*, for he hath no proper interest in the estate; *tamen vide*, the Writ for the Ordinary in the *Regist. orig. 141. A. Quare*, if it lie not, what remedy the Ordinary hath to recover the estate, and to punish the *tort fesor*.

Nota.

Nota, when a man demands money it shall be *debet & detinet*, *Nat. br. 119. G. viz.* where the Action lies in the *debet & detinet*.

And if it be for any other thing it shall be in the *detinet* only, *Nat. br. 119. G. Regist. orig. 139. B. 34 Hen. 6. 12. pl. 23.* for a man is not properly said to owe goods, but to detain them.

And the Writ shall make mention of the value of the goods, *17 Edw. 3. 48. pl. 17. 29 Edw. 3. 39. pl. 14. & fol. 45. pl. 6.* that the charge may be certain.

And if it be for money, or other things together with it, then it shall say *10 l. quæ ei debet & injuste detinet, & 10 l. quarters of Corn, quæ ei injuste*

injste detinet, Nat. br. 152. B. 3 Hen. 4. 13. pl. 20.
 11 Hen. 6. 48. pl. 6. 12 Hen. 6. 1. pl. 3. *vide* 39
 Hen. 6. 34. pl. 46. debt for 300 l.

A man cannot demand 10 l. by one Writ, and
 10 l. by another, where the contract was for 20 l.
 1 Hen. 5. 6. B. but the charge must be entire as the
 contract was, otherwise there will be unnecessary
 charge.

For in *Mich. 14 Jac. Ban. Regis*, in the case of
 the Bailies of *Ipswich Houghton* Justice said, that
A was indebted to the King in 3000 l. the King
 granted to *B* 1000 l. parcel of it, yet *B* shall not
 have debt for the 1000 l. as was adjudged in
 the Chequer, *int. Torke & Allen*, for this were to
 alter the debt.

A was bound in 6 l. *Flemmish*, *quare* what
 Writ he shall have, 34 Hen. 6. 12. pl. 23. 29 Edw.
 3. 19. pl. 5. *viz.* for what sum, whether it shall be
 reduced into sterling money.

For *Lib. Intra. 158. C. sect. 1.* the Writ was
 for 28 l. and the account of the bill was 19 l. 16 s.
Flemmish, which is 14 l. *English*, and for the
 Remnant, &c. the Action brought.

The Process in Debt, 1. Before appearance.

2. After appearance.

At the Common Law the Process was but a
 Summons, Attachment, and Distress infinite,
Coke 12. A. Harberts case.

But by 25 Edw. 3. cap. 17. *Capias* was given,
 yet the Process is yet a Summons, Attachment,
 and Distress, 3. a *Capias* and an *Exigend.* 14 Hen.
 6. 20. A.

But

But if Debt be in the County *per Justicies*, and the Bailly return a *Nibil habet*, and afterwards this is removed, *quere* if a *Capias* lies, 3 Hen. 5. 4.

Nota.

that a *Capias* lies not upon a Recognizance, 23 Hen. 7. 100. pl. 1. Crooke, for that is in the nature of a Judgment, upon which a mean Process lies not.

Nor against a Peer of the Realm, Coke 6. part. 52. B. 11 Hen. 4. 15. 3 Hen. 6. 48. 29 Edw. 3. 30. pl. 40. & 42. pl. 3. 5 Edw. 4. 108. B. because he is intended to have Land sufficient to pay his debts.

But if a Bishop of Wales or Ireland be sued upon a *Nibil habet* returned, a *Capias* lies, *ibidem*. *Quere* of a Welsh Bishop.

Account.

The Barr in Debt.

For arrearages of account.

Debt lies for Arrearages of Account, that he owes nothing is a good barr, Lib. Intr. 149. B. sect. 2. for this may be put in issue.

1. Before Auditors.

And this may be by wager in Law, because it is within the Statute, 22 Hen. 6. 35. pl. 53. 9 Hen. 5. 3. pl. 9. 43 Edw. 1. pl. 3.

2. Before Auditors.

And so if it be before an Auditor, Coke 10. part. 103. A. 4 Hen. 6. 25. pl. 3. 20 Hen. 6. 16. pl. 4. 13 Hen. 7. 3. B. *Conesby*.

If it be for Arrearages of account before Auditors, imprisonment by Auditors is a good Bar; but then he ought to be committed forthwith by the Auditors, 27 Hen. 6. 8. pl. 7. Coke 8. part. 119. B. Com. 17. for this is as it were the Execution against him.

Non computavit a good barr, 3 Mariae Dyer 122. pl. 18. for if there were no Account, there can be no Arrearages found upon it, for which to bring the Action.

Nul

Nul tiel account, 34 Hen. 6. 22. A. Danby, a good barr.

Arbitrement for Arrearages of the account no barr, because one is matter of Record, but the Arbitrement is not, 3 Hen. 4. 5. pl. 23. 4 Hen. 6. 17. 8 Hen. 4. 6. pl. 28. 8 Hen. 5. 3. pl. 13. Hull, 3 Hen. 6. 55. A. and so cannot discharge a matter of Record.

Auditors discharged by the Plaintiff a good barr, Lib. Intra. 150. A. Sect. 9. in Account, for this destroys the account upon which the Action is brought.

Obligation made to the Plaintiff for Artearages no barr, 11 Hen. 4. 79. for an obligation is but a thing in Action. Q.

Payment in another County a good barr, Lib. Intra. 150. A. sect. 10. for the place of payment is not material or traversable.

That he owes nothing *per patriam*, a good barr, Lib. Intra. 150. A. sect. 1. 4 Marie Dyer 145. pl. 63. for this is a direct tender of an issue.

That he owes nothing by the Law no barr, because Auditors are Judges of Record, 2. cap. 11. Coke 103. A. Denbouns case, 4 Hen. 6. 17. 8 Hen. 6. 5. 14 Hen. 19. pl. 21. 9 Hen. 5. 3. pl. 9. and they have adjudged him to owe.

But the Plaintiff may be examined by the Auditors, and if it be not found that the Defendant is in Arrearages, the Defendant may wage his Law, per the Statute, 5 Hen. 4. cap. 8. Coke 10. part. 103. A. 8 Hen. 6. 10 & 15. 19 Hen. 6. 43. pl. 96. 20 Hen. 6. 32. Alston, for then he is not concluded by the Auditors.

And if the Plaintiff or his Attorney refuse to

Q

be

be examined, the Defendant shall wage his Law, 33 Hen. 6. 24. pl. 5. for then the Defendant may be believed as well as the Plaintiff.

But if the Executor brings Debt for Arrearages of account in *vita testatoris*, he shall not be examined; but his Attorney shall, but not upon Oath, 3 Hen. 6. 40. pl. 2. 19 Hen. 6. 8. 10 Hen. 6. 20. 34 Hen. 6. 32. *Ashton*, 20 Edw. 4. 3. pl. 24. for the Executors shall not be intended to be privy to the contracts of the Testator.

But 21 Hen. 6. 4. pl. 10. the Executor was examined, but not precisely, which signifies little; for in *generalibus non est certitudo*.

So if another brought such Action against an Executor, he shall not be examined, 20 Edw. 4. 3. pl. 14. viz. the Plaintiff.

So if it be found that they submit themselves to Arbitrement, so that they were not Auditors, but Arbitrators, they shall wage their Law, 22 Hen. 6. 41. pl. 13. for Arbitrators are not Judges of Record.

Lord.

The Lord shall say that he owes nothing, and waged his Law, *Westm. 2. cap. 11.* doth not extend to the Lord, 14 Hen. 6. 24. 22 Hen. 6. 41. 38 Hen. 6. A. 29 Edw. 3. 26. pl. 20. *Coke 9. part. 87. A. Pinchons case. Q.*

The Defendant alledges before Auditors, that he delivered to the Plaintiff one Statute Merchant in lieu of the sum, the Plaintiff wages his Law, 30 Edw. 3. 4. pl. 19. upon the delivery. *Quere.*

Lending :
to Prede-
cessor.

Successor shall wage his Law upon a thing lent to his predecessor, 13 Edw. 4. 4. pl. 9. because not privy to the contract.

That

That he owes nothing by the Law, a good barr, *Lib. Intra.* 152. *C. sed.* 5. although the thing lent be by others hands, 29 *Edm.3.* 26. *pl.* 24. for the Law wager is upon the receipt, and not the delivery.

To the party.

Debt upon bailment, the Defendant pleads that they were delivered to be redelivered to B, the which he had done, a good barr, *Nat. br.* 138. *M.* for the trust was performed, and the contract thereby discharged.

Bailment

Arbitrement of Rent, Trespafs, and payment of the thing awarded, a good barr without saying he owes nothing, 10 *Hen. 7.* 4. *pl.* 4. *Q.* for thereby the agreement is waved.

Contract
Real, 1. for years.
2. for life.
3. at will.

An Accord, a good plea, 10 *Hen. 7.* 24. 2 *Rich. 3.* Debt 100. *Coke* 9. *part.* 97. *A. Peytoes* case, for the same reason.

Acquittance of the last day shall discharge all Arrearages, 11 *Hen. 4.* 24. 10 *Eliz. Dyer* 271. *pl.* 26. due before; for it shall be intended there was nothing due when the Acquittance was given.

The Lessee pleads the command of the Lessor to repair the house with the rent, because it was decayed; this is no good plea, because it is waste, 34 *Hen. 6.* 17. 14 *Hen. 4.* 27. *pl.* 35. 11 *Rich. 2.* Barr, in the Lessee to suffer the house to decay, if he was not Lessee at will.

But if the grand Timber be in decay, perchance it may be a good barr, *ibidem*; because Lessee at years is not bound to repair them, except he be tied by special Covenant, as it seems.

Quere.

The Lessee was Advocate in the Spiritual Court, the Lessor promises that he shall keep

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the Rent for his Fees, this is no barr, for stoppage is no plea, but he hath a good ground to have an *Assumpsit* to recover his fees, *Mich. 9 Jac. Ban. Regis, Jarvis versus Lea*, and here is no consideration for the promise, for he was his Advocate upon another ground.

The Lessee pleads, that the Lessor entred before the day of payment, and ejected him, a good barr, 27 *Hen. 6. 10. pl. 6. 46 Edw. 3. 1. pl. 1. Lib. Intra. 175. D. sess. 10, 11, 12.* for then the Rent could not be due, for it was payable for the whole term, and cannot be apportioned, for it is entire.

A good barr to say, that the Lessor entred before his day without any more, 34 *Hen. 6. 21. pl. 40.* for the entry implies an ejectionment; for both cannot be in possession.

So if the Lessor enter but in part, a good barr, *Coke 3. part. 22. B. Walkers case*; for the Rent is payable for the whole thing lett, and is entire.

But if the Lessee enter again before the day of payment, no barr; for then he regains the possession, and hath elected to wave this advantage of the entry made upon him.

So if the Lessor cuts the Trees, no barr, because the Lessor ejects not the Lessee, 33 *Eliz.* but is only a Trespasser.

Entry by a Stranger which hath a better title, a good barr, *Perkins 163. Lib. Intra. 176. A. Sess. 13. 45 Edw. 3. 8. pl. 10.* for that makes void the Lease.

But not for Arrearages due before the entry, 9 *Hen. 6. 17. B. Cottessmore*, 19 *Hen. 6. 42. B. Paston*, 20 *Hen. 6. 20. pl. 15.* for so long the Lease continues in being.

Debt

Debt for Rent in *com. M.* where the Land is in *com. E.* levied by distress is a good plea, without saying more, 4 *Hen. 6. 5. pl. 12. 22 Hen. 6. 31. pl. 19. 28 Hen. 6. 6. pl. 2.* Although the Lease be by Indenture, 4 *Hen. 6. 5. pl. 12. 18 Hen. 6. 17. A. per 2 Justices, 11 Hen. 7. 4. pl. 16.* for it shall be intended to be levied where the Land lies, which cannot be tried where the Action is brought.

But if it be in the same County where the land is, then it ought to conclude that he owed nothing, because the Countrey may have notice whether he did or not, 28 *Hen. 6. 6. pl. 2. 33 Hen. 6. 4. pl. 12.* and may try the issue.

But the 9 *Edw. 3. 33. 4. pl. 16. Herle*, it is good without such conclusion. *Q.* It seems, he thought levied by distress doth imply that he owes nothing.

Debt upon a Lease for Tithes, levied by distress is no barr, because there is nothing subject to distress, 22 *Hen. 6. 35. pl. 53. 11 Hen. 4. 40. br. debt 234.* and so the plea is impossible.

A good barr that the Lessor distrained, and sold the distress for the Rent by the assent of the Defendant, 2 *Rich. 2. Debt 235.* for so he might do, but not without his consent.

Payment in another County, a good barr without saying more, 22 *Hen. 6. 36. pl. 1. 34. Hen. 6. 17. B. Moyle, 9 Hen. 5. 2. pl. 6. 11 Hen. 7. 4. pl. 16. 1 Hen. 5. 6 & 7. 20 Hen. 6. 16. B. 22 Hen. 6. 35. pl. 53.* for the payment is the substance, and the place it not traversable.

For otherways it shall be tried where the Writ is brought, 4 *Hen. 6. 5. pl. 12. viz.* if he plead payment generally, for that shall be intended to be where the Action is laid.

To say, that the Lessor covenanted to repair the house, or that the custome is that he should repair it, and did not do it; this is no barr, because it is but a Covenant upon which the Defendant may take his remedy: but if the Lease be that the Lessee repair'd it; and paid the rent for Reparations, this is a good barr, that the Lessor did not repair it, 27 Hen.6.10. pl.6. 2.

But upon a lease by Indenture, and that the Lessee should repair the house at the cost of the Lessor, it is a good plea to say, that he did expend the Rent in repairing of the house, 2 Rich.2.235. for this agrees with the Lease.

That the Lease was upon a condition, and upon the breach of the condition the Lessor entred before there was any thing in arrear, no plea, for he ought to answer the *debet*, Crooke 153. pl. which he doth not by this plea, which is no more but a negative *pregnans*.

Surrender before the day a good barr, Lib. Infr. 176. C. sect. 17. for thereby the Lease was drowned before the rent due.

Contract
personal.

Accord a good plea, Coke 6. part. Blakes case, Lib. Intra. 205. C. Sect. 11. And so, that the Plaintiff had an obligation for the same duty, 3 Hen. 4. 17. for this is such satisfaction as the Lessor accepted of in lieu of the payment of the Rent.

Servant.

Payment to the Servant no barr, unless the Servant was commanded by his Master to receive it, or that the money came to the use of his Master by his assent, Doct. & Stud. 138. A. for a Servant is not a Receiver without special warrant.

Rent upon
a personal
thing.

Upon a Lease for years of a stock of Cattel, or other personal thing rendring Rent at several days, debt

debt lies not till the days be incurred, *Coke 3. part. 22. A. Walkers case*; because the Rent is entire, though the days of payment be several.

That he owes nothing by the Law a good barr, 1 *Hen. 6. 1. pl. 3. 9 Edw. 4. 1.*

That he owes nothing a good barr, although the Plaintiff be a Serjeant at Law, 3 *Hen. 6. 33. pl. 26. 21 Hen. 6. 4. pl. 6.* who sues for his Fees; for such payments use to be private. Salary for a Counselor.

The Defendant shall not wage his Law against an Attorney, because the Court compels him to be Attorney for the party, and so no voluntary retainer; otherways, if it be upon suit in a bafe count, 21 *Hen. 6. 4. pl. 5. Fortescue Newton*; for there he is not bound to be his Attorney.

That he departs his service within the term, a good barr, 40 *Edw. 3. 25. pl. 27.* against a Servant that sues for wages; for the wages is due for the whole time.

That he discharged him of the service within the term to which he agreed, is a good barr, 10 *Hen. 6. 23. pl. 78.* for this discharge is accepted in satisfaction.

That he retained him not *modo, forma, &c.* a good barr, 38 *Hen. 6. 22. pl. 41. viz.* according to the Statute.

Payment without specialty is not a good barr in debt, brought by a Servant retained in husbandry, 40 *Edw. 3. 21. pl. 27.* because he is retained by Statute.

And so if one be retained, but not according to the Statute, the Master may wage his Law in debt for the salary, else not, *Coke 9. part. 87 & 88. Pinchons case*, 3 *Hen. 6. 42. pl. 13. 11 Hen. 6. 48.*

4 Hen. 6. 19. B. 2 Hen. 4. 14. 39 Hen. 6. 18. pl. 24. 38 Hen. 6. 22. B. for such retainer is but a private agreement, whereof the Law takes no notice.

But he may not plead, that the Servant demands 40 s. *per annum*; and the Statute allows not this, because he was not retained according to it, 11 Hen. 6. 10. pl. 20.

So if he be retained in all occupations, although that husbandry be comprehended within it; but he must be retained particularly in husbandry.

If a general receiver retain one by deed, yet the Master may plead that he owes him nothing by the Law, 28 Hen. 8 Dyer 20. pl. 12. 4. for he hath no authority to retain him.

If one be retained in husbandry, although he be not compellable to serve, yet his Master shall not wage his Law, 38 Hen. 6. 22. B. pl. 4. because the Retainer is by Statute.

Steward.

A retains B to be his Steward of his Court for one year or more, he shall have debt although the retainer be by word; but not for an Annual pension, unless the retainer be by deed, Crooke 1 Hen. 8. 158. pl. 6. because that is of longer continuance, and therefore the contract ought to be more solemn than by parol.

Infancy.

Infancy no barr, 18 Edw. 4. 3. A Visitor, 10 Hen. 6. 14. A Perkins 4. in debt for diet and necessities, because the Law makes such Contracts good.

That he owes nothing by the Law, a good barr, 9 Edw. 4. 1. B. 19 Hen. 6. 10. pl. 25. 39 Hen. 6. 18. pl. 24. Moyle & Danby, 27 Edw. 3. 87. pl. 37. for the payment may be private as well as the contract.

So

So if a contract for tabling be made with B. 22 Hen. 6. 13. pl. 18. for a third person.

So if an Inn-keeper brings debt for Diet or Lodging because they cannot depart till they pay for it, 39 Hen. 6. 78. pl. 24. therefore it is reason to wage their Law to gain their liberty, if the Debt be paid.

But debt brought by the Lieutenant of the Tower for a prisoners diet, the Defendant shall not wage his Law, because the Lieutenant ought to find him ordinary Diet, *Coke 9 part. 87. B.* and therefore here shall be supposed a special contract which must be specially pleaded to.

The Defendant said that it was in another Vendition place, viz. the sale upon which the action is brought, and that it was made upon condition, and that the condition was not performed; a good bar to the Action, 34 Hen. 6. 6. 42. pl. 13. 44 Edw. 3. 28. pl. 6. vide 47 Edw. 3. 20. pl. 44. because the condition not being performed, the sale was null and void.

Debt upon a simple Contract, the Defendant pleads that the Plaintiff took an obligation for it, a good barr, *Coke 6. part. 45. Heggins. 3 Hen. 4. 17. 11 Hen. 4. 79. 9 Edw. 4. 50, 51.* For this amounts to a discharge of the Contract.

Payment without an Acquittance no plea, 1 Hen. 5. 6. B. in debt upon a specialty, because it must be discharged by a thing of as high a nature.

He cannot plead to the Country for part, and wage his Law for the other; but if it be for 20 s. that the Action is brought, the Defendant may say that the contract was for 10 s. without this that

that it was for 20 s. and as to the 10 s. he wages his Law: but *quere* if he may tender part, and wage his Law for the remnant, *Crooke*. 17 *Hen.* 7. 40. *pl.* 12. It seems not, for there may be more due, and therefore it ought to be put in issue.

In debt upon a sale that he owes nothing by the Law, a good bar, although the Defendant bought it of the servant of the Plaintiff; for the contract of the servant is the contract of the Master, 30 *Edw.* 3. 19. *pl.* 27. If the servant had authority to buy and sell, or that the thing bought came to the Masters use.

Unless the Contract be by deed, 39 *Hen.* 6. 35. *pl.* 46. Which must be avoided by Deed, and not by the Oath of the party.

Debt against the Husband and Wife upon a contract of the wife *dum sola fuit*; the Husband wages his Law, as now he may, for now it is his debt; but if at the day of the doing of his Law, the Wife be not there, the Husband shall be condemned, 33 *Hen.* 6. 43. *pl.* 23. For the debt originally was hers, and therefore she must join.

That he recovered in an Action upon the Case, upon an *Assumpsit*, a good bar, *Coke*. 4. *part.* 94. *B. Slades* case. in debt upon a Contract; for it was in his election to bring his Action upon the Case.

Escape.

The breaking of the Prison by Enemies or a Tempest, a good bar, 33 *Hen.* 6. 1. *pl.* 3. in debt against a Gaoler upon an escape; for he could not prevent it, nor can have satisfaction.

But not by Rebels, 33 *Hen.* 6. 1. *pl.* 3. For Rebels may be compelled to make the Gaoler satisfaction.

The

Er. f.

The Sheriff pleads that his predecessor suffered him at large, and that he did take him again, &c. a good bar, 2 *Edw.* 6. 67. *pl.* 17. in debt brought against him for an escape in his predecessors time.

Infancy no plea, because the Statute is general, *Doct. & Stud.* 147. B. In debt for necessities. *vid. antea.*

Debt against a Bayliff, because the Sheriff had not made out his Warrant for apprehending one in execution, and yet returns that he was taken, and was not, *quere* whether the Bayliff shall say no such Warrant against the return of the Sheriff, 5 *Edw.* 4. 1. It seems not, but must have his remedy against the Sheriff.

Non permittit ire ad largum, a good bar, 10 *Hen.* 4. 10. 38 *Hen.* 6. 29. 3 *Marie*, *Dyer.* 121. *pl.* 18. in debt brought upon an escape; for this is a direct tender of an issue that there was no escape.

A Return by a Bayliff of a *Liberty*, that the Precept was not come to him at the time, and that afterwards he was not in the *Liberty*, 18 *Edw.* 3. 35. is a good bar in debt against him.

Taken again before the Action brought, a good bar, if that he agree not to the escape, and make fresh suit, *Coke* 3. *part.* 52. *Rigways* case. 34 *Edw.* 1. debt. 162. Otherwise not; for then he is *particeps criminis*.

That he owes nothing, is no Plea, because this Action is brought, not upon a contract, but upon a special clause of the Statute, 2 *Rich.* 2. *Issue* 160. Which cannot be discharged by a plea parol, but he must answer to the Statute.

Account

Judgment
in Court.

Account upon a recovery of dammages, and the party committed in execution, *Nul tiel* record, a good bar, 30 *Hen. 6. 6.* For the Action is grounded upon the Record, and if there be no such Record, there can be no Action.

Debt upon a Judgment in Pypowders, a good bar that he was taken in execution, 7 *Hen. 6. 18.* upon the Judgment given in the Court of Pypowders.

Upon a recovery in a Court Baron, if an Action of debt be brought, the Defendant shall say that he owes nothing by the Law, 49 *Edw. 3. 3. A. Hanmer. 13 Hen. 7. 3. B. Conesby.* For such recoveries are of an inferior nature.

Debt for
dammages

Debt for Dammmages recovered in Affize of the Plaintiff after Verdict, and before Judgment pleaded, *quare 2 Maria, Dyer. 107. pl. 24.*

Levied by the Sheriff, a good bar, 11 *Hen. 4. 58. pl. 8.* For that is satisfaction in Law, as to the party.

Elegit pleaded in Bar good, 13 *Eliz. Dyer. 299. pl. 34.* For by the *Elegit* he hath elected his Execution.

Upon a recovery of Dammmages in ancient demesne, debt is brought against the Defendant, he shall not say that he owes nothing, but shall plead *Nul tiel* Recovery, *quare 34 Hen. 6. 49. A. pl. 15. Littleton.* For it seems he may as well here as upon debt brought upon a recovery in a Court Baron. *vide antea.*

For fine,
or amerci-
ment.

For an Amerciament in a Leet, that he owes nothing, by the Law no plea. 12 *Rieb. 2. Law 33.* For a Court-Leet is the Kings Court, and not a base Court.

For

For an Amerciament in a Court-Baron, that he owes nothing, by the Law a good plea, 12 Rich. 2. Statban, debt 35. No. Lib. intra. 119. A. fcl. 1. vid. antea.

In Debt upon a Statute Merchant with a defeasance, the Defendant said that he was a Lay-man, and not Learned, and that the condition should have been but to bind him to pay 40 l. and it was made 60 l. This is a good plea; for the Action is brought as upon an Obligation with a condition; but otherwise if execution be sued upon it as a Statute, Hil. 9. Jac. Banc. Regis. Fox versus Brooke. For then such plea comes too late; for the Statute is extended as a Judgment.

Arbitrement is no Bar in debt for arrerages of account before Auditors, because the sum being due by matter of Record, ought to be answered by matter of as high a nature, 3 Hen. 4. 5. pl. 23. 6 Hen. 4. 6. pl. 28. 8 Hen. 5. 3. pl. 13. Hull. 3 Hen. 6. 55. A. quere. 4 Hen. 6. 17. pl. 3. 10 Hen. 7. 4. A. which an Arbitrement is not. Arbitre-
ment.

Debt upon an *in simul computaverunt* that he was not accountable by the Countrey, no bar; for where the Defendant may wage his Law, the Contract is not traversable, Crooke. 13 Hen. 7. 39. pl. 4. For the Action supposeth that he assented to the accompt, so that that is not to be put in issue.

Nullum fecerunt arbitrium, a good Bar, because this lies in notice of the Countrey, Crooke. 13 Hen. 7. 39. pl. 4. In action of debt upon a Bond, to perform an award.

But if he plead such a plea, he cannot rejoyne after-

afterwards, and say that the Arbitrators gave no notice, but must plead it in Bar, and not by way of Rejoynder, *Crooke. 7 Hen. 8. 155. pl. 8.* For such a Rejoynder confesses an Award, and the Bar denies it; so that the Bar and the Rejoynder cannot stand together.

The Arbitrators gave no notice, no Bar unless the submission be so, viz. that the Arbitrators should give notice; for else the parties are to take notice at their peril.

The Defendant said, that before the Arbitrement made, he discharged the Arbitrators; this is a good Bar, *21 Hen. 6. 30. 28 Hen. 6. 6. Coke 8. part. 82. B. Uniers case*, and needs not to aver that the Arbitrators had notice; for they must be discharged without notice.

Obligati-
on simple
accord.

Debt upon an Obligation, accord with satisfaction is no Bar, because the duty being certain, ought to be avoided by matter of as high a nature as it was created, which cannot be by parol. *Coke 6. part. 44. A. Blake's case.*

But if the duty accrue not until some subsequent act be performed, there accord with satisfaction a good plea, *Coke 6. part. 44. A.* For there the duty was not certain, but depended upon a matter *ex post facto*.

Acquit-
tance,

A. obliged to B. in 100 l. shews 3 Acquittances, 1, of 10 l. 2, of 20 l. and 3, of 20 l. which amount to a receipt of 50 l. parcel of the 100 l. in which he was bound to pay 50 l. this is a good Bar, because it appears that it was but 50 l. principal debt, for which the Bond was made, though the penalty was 100 l. 43 Edw. 3. 31. pl. 26.

Foreign

Foreign Attachment in London is a good Bar, as it seems, *No. Lib. intra. 139. C. sect. 20. 22 Hen. 6. 47. pl. 2.* By the Custom there. *Q. tamen,* for it may be unduly attached, and no Judgment upon it.

But a Legacy cannot be attached, because it may not be due in respect of payment of the Testators debts, *Mich. 14. Jac. Ban. Regis. Vaughans case.* and so it is a thing uncertain.

Attainder of Felony no plea, *Mich. 38 & 39. Attainder. Eliz. com. Ban. Banister versus Trusselle.* in debt. for the Attainder doth not discharge the debt.

Nil debet in debt upon an Obligation is no plea, because an Obligation shall not be avoided by a *nude Averment*, but by matter of as high a nature, *Doct. & Stud. 22.*

Non compos mentis pleaded by the party, is no good Bar. *Trin. 37 Eliz. ban. Regis. Strode versus Marshal. vide 5 Edw. 3. 70.* For the party shall not plead in his own disability.

Payment without acquittance no plea, in debt without a specialty, *33 Hen. 8. Dyer. 51. pl. 10. Coke 5. part. 43. Doct. & Stud. 22. 20 Hen. 6. 3. A. Payton. 26 Hen. 8. Dyer. 6. pl. 3. 28 Hen. 8. Dyer. 25. pl. 160. 41 Edw. 3. 7. pl. 15.* because it must be avoided by a matter of as high a nature.

A. by indenture sold Land for 20 l. and there were Covenants in the Deed; for the performing of which, he bound himself in 40 l. Debt was brought for the 40 l. Payment without Acquittance is no plea, *26 Hen. 8. Dyer 6. pl. 3. & fol. 25.* because the Action is grounded upon the Indenture and the Bond.

A De-

A Defeazance upon a Statute-Merchant to pay 20*l.* thereof without an Acquittance, is a good plea; for the Defeazance is instead of an Acquittance, and this is without bringing an *audita querela*, when the party is not in execution, 17 *Edw.* 3. 3. *pl.* 10. For if he be in execution, there he must have an *audita querela*.

Obligation
condition-
al.

A. is bound by obligation to pay his Rent, there payment without an Acquittance is a good bar, 46 *Edw.* 3. 1. *pl.* 1. because the obligation was but conditional, and made no present duty.

Accord.

When the original contract is for money, an accord with satisfaction is a good bar, *Coke.* 9. *part.* 79. *A.* *Petoyes* case. 22 *Edw.* 4. 25. *A.* For thereby the contract is discharged.

But an accord made with a general receiver is no bar to his Master, if he had not a special authority, *Doct. & Stud.* 137. *B.*

But when the condition of the agreement is for a collateral thing, there an accord is no bar, *Coke* 9. *part.* 79. *A.* 12 *Hen.* 4. 23. 9 *Hen.* 7. 4. 4 *Hen.* 8. *Dyer.* 1. For such a thing cannot be accorded for.

And if it be before the day of doing the thing, then part of the sum received is a good bar, *Coke.* 5. *part.* 117. *Pinnels* case. 27 *Edw.* 3. 84. to the Action, because the Action is brought upon the whole Contract, part whereof was discharged before the time agreed on for performing it.

But at the day, or after, it is no bar, unless it be in another place, *Coke* 5. *part.* 117. *Pinnels* case. Because then the whole duty was due upon the entire contract; part received is a good bar in another County, else the party shall be without remedy for so much as he paid, The

The Defendant pleads, he paid so much in full satisfaction, the which the Plaintiff received, and not that he paid so much, the which the Plaintiff received in satisfaction, *Coke 5. part. 117. A. Pinwells case*, and good; for he must receive the money as it was paid, and not as he will receive it.

Conditions performed is a good barr, 41 *Edm. 3.* Conditions performed. 10. *pl. 7. & fol. 25. pl. 19. Thorpe*, in an action of Debt upon a Bond for performance of Conditions.

One pleads part of the Arbitrement, it shall be intended all that was arbitrated, until the contrary be shewed by the other party. 2. The other may shew the remnant, and traverse *absque hoc*, that they arbitrated that only as he pleaded it. 3. The other needs not to rejoyne to more, but joyn issue, because else it shall be a departure from his Plea, which must not be in pleading, *Pasch. 12 Jac. Ban. Regis; Linsey versus Ashion.* Arbitrement.

Upon an Obligation with a Condition to levy a fine upon Garnishment, the Sheriff returns him garnished in debt, he pleads that he was not by the Law, 28 *Edm. 3.* 100. *pl. 42.* 29 *Edm. 3.* 44. *pl. 4.* and good; because it is penal unto him, and the Bond is but conditional, and no present duty, and therefore the Sheriffs return shall not bind him. Condition to levy a Fine.

A encoffs B by Deed poll, provided that if he pay 20 l. to B he may re-enter, and is bound to perform all Covenants and Payments contained in the Deed poll; he is not bound to pay the 20 l. for it is at his election to pay it or lose the Land, *Trin. 9 Jac. Ban. Regis; Briscoe versus Knight,* Deed poll.

Knight, Rott. 271. for if the Proviso be not performed, the Feoffment is absolute, and the Bond is but to strengthen the Feoffment.

A is bound to *B* to pay a sum granted by *C* by Indenture to *B*, and to levy it of his goods and Chattels, *viz.* of *C*; this is void, and therefore no barr in Debt brought by *C*, 41 *Edw. 3. 7. pl. 15. Belknap*, 46 *Edw. 3. 18. pl. 17. Belknap. Quare.* A thing void in Law cannot be pleaded in barr.

Condition *A* Conditions that *B* shall lease to *C* the Land in his occupation, except the Trees, this exception is not good, unless they were excepted in the Original Lease, and then *B* ought to shew it, *Mich. 15 Jac. Ban. Regis, Dorset case*; for he lets him not the land in his occupation, if he had the Trees and excepted them.

A Conditions that Lessee for life shall make a Lease for 10 years, and he makes one for ten years, if he live so long; this is good, for it was implied before, *Mich. 15 Jac. Ban. Regis, per Montague Chief Justice, Woolridge & Banbury*; for such a Lease could be made but conditionally.

A Condition to deliver such a Lease as shall be devised by the Judge of the Court of Audience, *Non devisavit aliquid, &c.* is no barr, for he ought to procure him to make one at his peril, *Coke 5. part. 23. B. Lambs case*, the Pleading. *No. Lib. Intr. 130. A.* for the Condition is for the Obligor's benefit, and therefore he must do his best to see it performed.

Impossible condition. *A* is obliged to *B* in 20 *l.* upon Condition to pay 10 *l.* to such a person, at such a place and time

time as B should name in his Will, B makes his Will and names none, the Executors shall not have it, for the Condition is become impossible, for he ought to be named in deed, *Trin. 12 Jac. Com. Ban. Pease & alii versus Mead, Mich. 11 Jac. Rott. 945.*

The Defendant said that he made another obligation to the Plaintiff, the which he did accept in satisfaction of the former; this is no barr, because it is but a thing in Action, *Mich. 12 Jac. Com. Ban. Rand. & Strut. Trin. 6 Jac. Com. Ban. Rott. 10001. Lovelace*, and one thing in action cannot be discharged with another thing in action.

Payment according to the Condition a good Payment. barr, *Coke 8. part. 58. A. Beechers case*; but he must shew the place where he made the payment, *5 Edw. 4. 141. B.* because it is material.

Payment of parcel hanging the Writ, is not good to abate the Writ without an Acquittance, *3 Hen. 7. 3. pl. 12. 5 Hen. 7. 10. pl. 15. 7 Edw. 4. 15. Vide 28 Hen. 8. Dyer 6. pl. 3.* because the duty was by specialty.

A is bound to B in 10 l. and after the date is a clause that he shall pay him 5 l. the Obligation is void as to the 10 l. payment there without Acquittance is good, *30 Edw. 3. 3. pl. 12. Q.* because the Obligation is void.

But payment after the day is not good without Acquittance, *48 Edw. 3. 29. pl. 23. 47 Edw. 3. 13. pl. 14. 5 Hen. 7. 41. pl. 5.* because then it is a duty vested.

A is bound to pay 20 quarters of Mault, and if he pay it not at the day, then 40 quarters; in Debt for the 40 quarters he may plead payment

of the 20 quarters without Acquittance, because it is to save a penalty; but not in debt for the 20 quarters, 28 *Hen. 8. Dyer* 24. *pl. 154. 1 Hen. 5. 7. A.* because that was the original duty.

Three are bound to pay their Rent, one pays it, the other pleads payment without Acquittance, 45 *Edw. 3. 4. pl. 9.* and good; for the payment of one is the payment of all, and he may not have an Acquittance.

A is bound by an Obligation dated 17th of November, 12 *Jac.* with condition of payment the 19th November next ensuing, *per Curiam* payment 19th November 13 *Jac.* is sufficient, for it shall not be intended 19th November in the same month, *Mich. 13 Jac. Com. Ban. Price & Coe*; for it shall not be intended that an Obligation should be made for two days, and the next ensuing shall relate to the month and not the day.

Conufee of a Statute had Execution for 20 *l.* and by Indenture grants, that if the Conufor pay 8 *l.* at a day to come, the Statute shall be void; this is a good discharge, 20 *Affize pl. 7. Quere,* whether the Statute or the Execution shall be void.

Payment to a Deputy a good barr, 42 *Edw. 13. pl. 35 Q.* what Deputy.

Payment to the Bailly of a Bishop without his command is a good barr, 22 *Edw. 4. 25. pl. 5.* for it is payment to the Bishop.

But payment to a Servant without command is no barr, unless it comes to the use of his Master, *Doct. & Stud. 38. A.* for a Servant as a Servant is no Receiver.

Payment

Payment to a Creditor of the Obligee by his command is a good barr, 46 *Edw. 3. 33. pl. 45. Perkins 145. A.* for it is a payment to himself, being for his benefit.

But then he ought to shew that the Creditor was the Creditor of the Obligee, 27 *Hen. 6. 6. pl. 1. viz. in his plea.*

In debt upon an Obligation with a Condition to pay 20*l.* to *B* as soon as he comes to the Age of 21 years. 1. The Defendant ought to shew in performance of the Condition, that *B* is of full Age. 2. He ought to shew the place where he paid it, for otherwise there cannot be any traverse, *Mich. 12 Jac. Ban. Regis, Halse.*

Condition to permit one to enjoy, &c. he pleads that he did permit him, and good, 10 *Eliz. Dyer 279. pl. 6.* for that answers the Condition fully. Permit.

The Defendant said that the Plaintiff was indebted to him, and that he commanded him to retain it, a good barr, 22 *Edw. 4. 25. 65.* for such retainer is satisfaction in Law. Retainer.

Acquittance a good barr, from the party himself.

But an Acquittance by a general Receiver without receipt of the money by his Master, is not good, unless he be Receiver by deed, and hath authority to make Acquittances, *Doct. & Stud. 137. B.* for then his Master shall be estopped by the deed, to say he was not his Receiver.

Barr general to an obligation. Acquittance.

A brought debt in *Ban. Regis* against *B*, and that depending brought debt for the same debt in *London*, and had goods attached in the hands of *C*, and had judgment upon them; this is a good

barr in debt, brought by B against C for the goods attached: but if A brings debt against B, and after the debt is attached in London, and Judgment given there, if the Creditor sue B he cannot plead the Attachment in barr, because he might have pleaded it to the Action brought against him in Com. Ban. Mich. 39 & 40 Eliz. Com. Ban. *Jaques versus Lemker*, in barr of the Action brought in London, and so have avoided the Attachment.

A Debt is attachable before the day in which it is payable, because it is a duty, and the debtor *debet*, although *non detinet*; but an obligation made to perform Covenants is not attachable, Mich. 39 & 40 Eliz. Com. Ban. *Beacher versus Minors*; for this is incertain whether it may ever become a duty.

Coverture. Coverture a good barr, *Lib. Intr.* 168. B. *sect.* 1. in an Action of debt brought against a Feme Covert, upon an obligation made during Coverture.

Infancy. Infancy a good barr, *Lib. Intra.* 163. A. *sect.* 1. for an Infant cannot be bound, nor contract to his prejudice.

Non est factum. *Non est factum* a good barr, but not if the deed be inrolled, 16 Hen. 5. B. 9 Hen. 6. 60. A. *Babington*, 39 Hen. 6 32. pl. 45. because the party hath acknowledged it to be his deed before the Judge or Master of the Chancery.

When a deed is but voidable, *non est factum* no plea, *Coke* the 5. part. 119. A. *Whelpsdale's case*, 11 Hen. 7. 15. for *non est factum* is a plea to destroy the deed; and to make it absolutely void, and not *ad libitum*.

When

When an obligation is once good, and after and before the plea becomes void, *non est factum* may be pleaded, *Coke 5. part. 119. A. B. Whelpsdales case*; for the Plea was true at the time of the pleading of it, which sufficeth to make the Plea good.

When 3 are bound *separatim*, and the Seal of one is broken, the other cannot plead *non est factum*, because they are several Obligations, *Coke 5. part. A. Mathewsons case*; otherwise it is where they are joyntly bound.

But it is not so when 3 are bound without any more, *Coke 11. part. 28. B. Pigots case*; 3 *Hen. 7. 5. Coke 5. part. 23. A.* for there they shall be intended to be joyntly bound.

But if two be bound in debt against one only it cannot be pleaded, *Coke 5. part. 119. A. Whelpsdales case*; for it is the debt of both of them.

A Recovery in an inferiour Court of Record with Execution a good barr, *Coke 6. part. 45. B. Higgins case*; but not, if it be not in a Court of Record, or if there be no Execution.

But without Execution not, *Coke 6. part. 45. A.* for that is all one as if there were no Recovery had, and so there is no satisfaction.

A Recovery is a good barr so long as it is in force, *viz.* if it be in one of the Courts at *Westminster*, *Coke 3. part. 44. B. Higgins case*.

Release a good barr: A Release destroys the duty, and consequently the remedy to recover it. Release.

Two bound to B, who makes the wife of one of them his Executrix, and devises his goods to her; this is a good release of the debt, for the debt is part of his goods; for if the obligee make

the wife of the Obligor his Executrix; this is a Release in Law to the husband, because the Obligation is suspended *pro tempore* by the act of the party himself, *Trin. 12 Jac. Com. Ban. Fryer versus Gildridg*; for the wife cannot sue the husband to recover the debt.

A Release of all advantages in account, a good barr in debt upon an account, *9 Edw. 4. 49. Coke 8. part. 152. A. Alshams case*; for Arrearages are advantages arising upon the account.

A is bound to B to the use of C, the release of C is a good barr, *36 Hen. 8. br. Obligation 27.* because the Obligation was for the benefit of C, and so upon the matter he was bound to C.

Simony.

The Defendant said that the agreement was for the obtaining a Benefice; this is nought, 1. Because the Statute makes the contract void, because Simoniackal. 2. It cannot be averred out of it, being a matter *dehors* and not appearing, *Mich. 40 & 41 Eliz. Com. Ban. Gregorie versus Olden.*

Statute.

The Defendant pleads that the Obligee accepted of a Statute for the Obligation after the day of payment; this is no barr, because the Obligation is in force notwithstanding the acceptance, for ought appears to the contrary, *Coke 6. part. 44. B. Higgins case.*

Statute-
Law.

The condition of a Counter-bond was to save the Surety harmless; it is no plea that the former Bond was usurious, because the Counter-bond was not for payment of money, but to save harmless, *Mich. 40 & 41 Eliz. Com. Ban. Dowman versus Button*, and so it matters not to him upon what consideration the former Bond was entered into.

The

The Judgment in Debt.

The Judgment, *Lib. intra. 173. B. sect. 1.* Against an
Executor.

Arrerages of account, the Executor pleads no such account, or nothing in arrear or outlay in the Plaintiff, and it is found against him, the Judgment shall be *de bonis Testatoris*, 34 Hen. 6. 22. *A. Danby*, and not *de bonis propriis*, for here is no *devastavit*. 2.

A Covenant broken after the death of the Testator, the Judgment shall be *de bonis Testatoris*, 15 Eliz. Dyer. 324. pl. 34. For the Covenant concerns him only as Executor.

Nothing in Arrear in Debt for rent due in *vita Testatoris*, or no such Lease, the Judgment shall be *de bonis Testatoris*, 34 Hen. 6. 22. *A. Danby*. For such pleas an Executor may plead.

An Acquittance or a Release pleaded and found against him, if it be pleaded made to the Executor, the Judgment shall be general. 11 Hen. 6. 8. *A. Danby*. 34 Hen. 6. 24. *A. Prisot. Quod recuperet de bonis propriis*.

Non Assumpsit of the Testator to pay the debt, the Judgment is of costs and dammages of suit *de bonis propriis*, if the Testator had not sufficient. *No. Lib. intra. 1. B. sect. 1.* for putting the Plaintiff to a needless suit, which it is likely the Testator would not have done.

The Executor found in a Chest a Grant of the next avoidance of an advowson made to the Testator, and presentation thereupon in a Recovery in a *quare impedis*, against him, the Judgment shall be of his proper Goods, 34 Hen. 6. 22. B. *Prisot*.

Prisot. For he shall not prejudice the Testators Estate by his own wrong.

Co-executor pleads, and found against him, the Judgment shall be *de bonis Testatoris*, 9 *Hen. 6.* 44. 11 *Hen. 6.* 7. 34 *Hen. 6.* 32. *A.* as well as where both are sued; for one Executor may answer if he please.

Confession of the Action by the Executor, where he ought not to have done it, the Judgment shall be general against him, *viz. de bonis propriis*, because he ought to have pleaded that he had not more than 20 *s.* and against the other Executor it shall be *de bonis Testatoris*, 14 *Hen. 4.* 12. *pl. 1. Hull*; for he is in no fault, and shall not therefore be punished for his compactions ill pleading.

And by 33 *Hen. 6.* 2. it shall be of the goods of the Testator, if the Executor hath none for the damages of the goods of the Executor that confesses the action; because the Plaintiff may otherwise lose his damages.

But 4 *Eliz. Dyer.* 210. *pl. 23.* it shall be but *de bonis Testatoris* in both cases, 28 *Hen. 6.* 3. *pl. 13.* 40 *Edw. 3.* 2. 7. *pl. 3. Q. Ergo.*

So in a *rationabili parte bonorum* upon confession of one Executor, 28 *Hen. 6.* 4. *pl. 20.* 33 *Hen. 6.* 24. *pl. 1.*

Nemines Executor found against him shall be general, 11 *Hen. 4.* 5. 11 *Hen. 6.* 8. *A. Danby.* *de bonis propriis* for his false plea; for his falsehood shall not prejudice the Testators Estate, if he can make satisfaction.

But the Judgment shall be *de bonis Testatoris*, *fi.* &c. and if not *de bonis propriis*, 9 *Hen. 7.* 15. *pl.*

pl. 1. 2 Edw. 4. 4. 33 Hen. 6. 23. 11 Hen. 6.
10. B. 2.

One pleads *ne unques* Executor, the other *plenè administravit*, all but 40 s. and found against the former, and Judgment given that there should be recovered against both as much as there was in their hands, and the residue against the other, 11 Hen. 6. 37. B. Paston. 46 Edw. 3. 9. B. for his false plea, and it shall be intended that he hath asserted, else he would have pleaded so, and not a shifting plea.

One dies intestate, and Administration is committed to D, by the Ordinary, and the Defendant pleads that he comes as servant to D. to administer, *absque hoc* that he did administer in any other manner; this is no plea, because he did not shew that it was the Ordinary of the place, and Judgment *de bonis Testatoris*, 31 Hen. 6. 13. pl. 5. as he ought, because it is traversable. This is an unskillful, and not a false plea, therefore the Judgment shall not be *de bonis propriis*.

17 Edw. 3. 20. pl. 58. where one Executor pleaded *non factum*, and found against him, there the Judgment was against him of the goods of his own, as well as of the goods of the Testator, and against the other, of the goods that he had at the day of the Writ, *vide* 17 Edw. 3. 20. pl. 1. stat. 9 Edw. 3. cap. 3. statute 1. 17 Edw. 3. 46. pl. 3. because by the Deed the Testators Estate is chargeable, and by the false plea his own.

In *Plenè administravit* pleaded, the Judgment was for so much of the principal debt as they had, and for the damages *de bonis Testatoris*, *si, &c.* if there were sufficient, and if not, then for damages

images de bonis propriis, and for the residue, as much as they had, *Coke 8. part 134. Shipleys case. 34 Hen. 6. 32. B. Prisot. com. 440. B. Pepyes case. vide 17 Edw. 3. 66. pl. 83. 46 Edw. 3. 9. pl. 6. Judgment special for the debt.*

Upon such a plea of the Defendant the Plaintiff may pray execution forthwith, because it is a confession of the debt; but no execution shall issue, until the Defendant hath goods of the Testators, *Coke 8. part Shipleys case. vide 21 Hen. 6. 40.*

But if it be found for the Plaintiff, no *scire facias* lies against them, *4 Hen. 6. 4. pl. 8. 2.*

Unless he prays Judgment upon the plea.

But yet *33 Hen. 6. 24. pl. 1.* is, That a *scire facias* lies; yet *Coke 8. part 53. A. Sym's* his case, that if it be for Land, he shall not have a *scire facias*, because there is no Record upon which it may be founded. *2.*

Against
an heir.

In debt, if the heir confess the Action for as much as did descend, then there shall be a special Judgment against him of so much as did descend, *Com. 440. A. Pepyes. case. 22 Eliz. Dyer. 373. pl. 4. the Judgment Lib. intra. 172. D. and he shall be charged for no more.*

But if he plead any other plea, and it be found against him, the Judgment shall be general, *Com. 440. Pepyes case.* for the whole, for his false plea.

So if he confess the Action, and shew as much as descends, if it appear to the Court that the profits of the Land from the time of the descent, until the time of the execution, are sufficient for the debt, the Judgment shall be general, else not. *per Dyer. 18 Eliz. Dyer. 344. pl. 1.*

Exc-

- Execution in debt. {
1. For the Plaintiff.
 2. For the Defendant.
 3. Of what Lands.
 4. Of what Goods.

At the Common Law it was but a *fieri facias*, *Coke 3. part. 12.* or a *levari facias*, *Coke 3. part. 12. A.* and this is of Chattels and Profits of Lands and Rents, *com. 441. A. Pepyes case.*

And this only within the year; for if the year were past, the party was put to his action of debt upon the Indictment, *Coke 3. part 12. A. Harberts case*, unless the process be continued, *33 Hen. 6. 49. pl. 33.* For if it be continued, then is the cause still fresh before them, otherwise the Court will take no notice of it.

But for a recovery against an heir, then it was but a *Liberate* of the Land, *Com. 441. A. Pepyes case. Lib. Intra. 172. D. 173. A. 3. Edw. 3.* Execution, 107. For the heir is only bound in respect of the Lands descended to him.

But by *Westm. 2. cap. 45*, a *Scire facias* was given after the year, and per *Westm. 2. cap. 18.* an *Elegit* was given, *Coke 3. part. 12. A.*

If a man have an *Elegit* filed on Record, and there be a *Nichil* returned, he shall never have any other Execution, *19 Hen. 6. 4. 5 Edw. 4. 41. 15 Hen. 7. 15. Fairfax.* for it is the last and highest Execution; and the Court cannot descend *à majore ad minorem executionem*. But if it be not filed, it is otherwise.

And by the *Stat. of 25 Edw. 3. cap. 17.* a *Capias* was given in debt; and per consequence a *Capias ad satisfaciendum* in execution of a Judgment, *Coke*

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in debt, *Coke 3. part. 12. A. Harberts case.* For it is reason an Execution may be of as high a nature as the mean process in the Action was, and of the same nature.

Mich. 41 & 42 Eliz. com. Ban. if the Plaintiff die after Execution, yet the Sheriff may levy it, and if there be no Executor or Administrator, the Moneys shall remain in Court until Administration. *Q.* whether the Ordinary may not have it. But if the Defendant die before Execution, there the Sheriff cannot make Execution; for the words of the Writ are, That it shall be levied of the Goods of the Defendant. *Thoroughgoods case.* *Q.* if it may not be against the Executors, because the Testators Goods in their hands may be said to be the Defendants Goods.

Upon a *non est inventus* returned of the Principal upon a *Capias* upon a Judgment in *com. Ban.* the party shall have Execution against the Bail, because the debt being by Original is certain; for it is mentioned particularly in the Writ, and there the Lands of the Bail, which they had at the day of the taking the recognizance, shall be liable, but *quare in ban. Regis*, if more Lands are liable than they had the day of the Judgment, because the debt is uncertain, *Mich. 15. Jac. Ban. Regis, Baskerville & Brooker.* special verdict.

The Defendant for Damages and Costs shall have the same execution as the Plaintiff should have had, if he had recovered against the Defendant, *per 23 Hen. 8. cap. 15.*

Viz. Of the Lands which he had at the time of the Judgment, and not before, *Coke 8. part. 171. Fleetwoods case. 42 Edw. 3. 11. pl. 13. 6. Edw. 193. pl. 14.*

But

But if the Judgment be the last day of the Term, the Lands which he had the first day of the Term are liable, because all the Term is but one day in Law, 42 *Affix.* 17. as to the Judgment; for a Judgment given the last day is a Judgment of the first day.

If two Joint-Tenants are for life, and one of them and against whom the Judgment is given, dies before execution, this shall not be put in execution, 13 *Hen.* 7. 22. *A. viz.* against the other, because he was not party.

Land in ancient demesne shall be put in execution, *Coke* 5. part. 105. *A. Aldens* case. *Hill.* 11. *Jac. Com. Ban. Rot.* 2541. *Cox & Barnesly.* upon a Judgment in debt given at *Westminster*; for the judgment is well given.

The Goods that he had at the time of the execution shall be only liable to execution, *Coke* part. 171. *A. Fleeswoods* case. 2 *Hen.* 4. 14. 9 *Hen.* 6. 58. 11 *Hen.* 4. 7. 34 *Hen.* 6. 23. *B. Prisot.* 21 *Hen.* 7. 87. pl. 1. *Crooke.*

Unless it be in case of Executors, 34 *Hen.* 6. 23. *B. Prisot.* For they may have other goods of the Testator come to their hands afterward.

But sale by covin after Judgment cannot hinder the execution; 22 *Affix.* 72. 13 *Hen.* 4. 4. pl. 9. *Q.* if sale be made pending the Suit before Judgment by covin.

Hill. 40. *Eliz. Com. Ban. per Curiam*, if a Writ of execution be awarded for debt or damages, and between the Test of the Writ and Execution, the party sold the goods *bona fide*, yet these are liable to the execution. *Q.* If so, where the Vendee knows not of the Judgment; for

for it seems hard, and yet it seems as hard on the other side also.

*Ejectment.**In what Court it lies.*

IT lies not in the *Marshalsey*, *Coke. 10. part. 72. A. Marshalsey.* For no Title for Land could be tried there.

In *Ban. Regis* it lies.

In *Com. Ban.* it lies.

In the *Exchequer* it lies for a party privileged, *Coke 1. part. 3. A. Pelhams case*; and this was by Bill. It seems it lies as well on the Pleas side, and more properly than by Bill.

But if it be for ancient demesne-Land, it lies not in the Court of the King, *Coke. 5. part. 105. A. Aldens case. 9. part. 77. B.* but in the Court of the Mannor by their privilege; but by consent it may be, as it seems, tried elsewhere.

Because the possession is to be removed in such action, *per Hobart Chief Justice, Hill. 11. Jac. com. Ban. Rot. 25. 41. Cox versus Barnsbee.*

But none can plead this but ter-tenant of the Land in ancient demesne, because the possession doth only concern him, *2 Hen. 7. 17. pl. 1.*

But

But if the Plaintiff do not put in his declaration until the end of the Term, the Defendant cannot plead ancient demesne the next Term, but must move the Court that the Plaintiff put in his declaration so late, and pray no advantage may be taken against him, and then the advantage shall be saved, *Trin. 12. Jac. Ban. Regis.* and he shall have liberty by rule of Court to plead ancient demesne the next Term.

But he may plead this after view, because by this he may confess if it be frank fee or not, 30 *Edw. 3. 9. pl. 20. 2.*

Who shall have an Ejectione firme.

Lessee for years only shall have it, *Nat. br. 120. F.* because this action is only to recover the present possession, and concerns not the Title, but *ex obliquo*, or collaterally.

And this only upon the possession in deed; for he shall not have it upon a possession in Law, 23 *Hen. 8. br. quia ejecit, infra, &c. 5.* For that is not an actual possession, and so there is no present disturbance.

Nor upon a Lease to commence *in futuro*, 37 *Hen. 6. 18. A.* For the same reason, and it may be it may never come in esse.

Note that Tenant for years needs not count that he entred, but that a Lease was made to him, by virtue of which he has possessed, *com. 503. B. Grendons case.* For the Word *Possessed* supposeth an Entry, or at least a taking of the Profits.

§

Tenant

Tenant for years leases to B. at will, who is outed by a stranger, tenant for years shall not have an action, because he had not the actual possession, *Pasch. 11 Jac. in the Exchequer inter Sir Richard Grebbham & Stone. Q. if Tenant at will may for the feebleness of his estate; it seems he may.*

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for years.

Tenant for years leases for one year, or a Lease is made for years, the remainder for years, a stranger enters, none shall have an ejectment but the Tenant in possession, *Crooke 130. pl. 99.* for none else is disturbed.

Lessee.

Lessee shall have an ejectment after the term ended, and recover all in dammages, *21 Edw. 4. 30. pl. 25. Brian. 7 Edw. 4. 6. B. Fairfax.* For other remedy he hath not to recover them.

Lessee which may have a real Action, cannot have an ejectment firmæ, *Com. 419. B. Bracebridges case.* For real Actions are to be preferred before possessory and personal, because of a higher nature, and thereby justice is more speedily done.

Husband
and wife.

Husband and Wife ought to join, if it be in right of the Wife, *21 Edw. 4. 10. pl. 1. 30. pl. 25. 7 Edw. 4. 6. B. Fairfax. Com. 418. B. Bracebridges case.* For the Husband cannot declare of a Lease made to himself, though he be interested in it by reason of the Marriage; and the Lease may come again to the Wife by his Death.

But if the term be ended, the Husband alone shall have it, because nothing shall be recovered but dammages, *7 Edw. 4. 6. B. Fairfax.* Which do only concern the Husband.

Lessee

Lessee for one year of a Copy-holder shall have an ejection firm, *Coke 4. part. 26.* For he is a possessor for a term of years, because the time is certain, and of less term certain than for years the Law takes no notice.

Lessee of a Copy-hold for more years, shall have an ejection firm, although that such Lease be a forfeiture, for it is a good Lease against all but the Lord, *Trin. 36 Eliz. Ban. Regis. Downings* case; and it may be the Lord will take no advantage of it.

Executor of a Lessee shall have it, *No. Lib. Executors intra. 195. D. sect. 6.* because the possession is come to him, and he is damnified by the disturbance.

Executor Plaintiff, Husband and Wife Co-executors, Defendants, and the Count. *Lib. intra. 252. B. sect. 6.*

Executor shall have an ejection firm *in vita Testatoris*, per the equity of the Statute, *4 Edw. 3. cap. 6. Coke 9. part. 78. B. Peytoes* case. else he should lose the term.

Churchwardens shall have it of Land leased to them, *15 Hen. 7. 8.* in right of the Church, for it is their possession *pro tempore*. 2. If new be elected before the trial, what shall be done.

Tenant by *Elegit* shall not have an ejectione firmæ, *Crooke 109. pl. 29.* For he hath no certain term; for the Owner may redeem the Land when he will.

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Executor Plaintiff, Husband and Wife Co-executors, Defendants, and the Count. *Lib. intra. 252. B. sect. 6.*

Executor shall have an ejection firm *in vita Testatoris*, per the equity of the Statute, *4 Edm. 3. cap. 6. Coke 9. part. 78. B. Peytoes* case. else he should lose the term.

Churchwardens shall have it of Land leased to them, *15 Hen. 7. 8.* in right of the Church, for it is their possession *pro tempore*. 2. If new be elected before the trial, what shall be done.

Tenant by *Elegit* shall not have an ejectione firmæ, *Crooke 109. pl. 29.* For he hath no certain term; for the Owner may redeem the Land when he will.

Tenant in
common.

Tenant in Common shall have it against his Companion, *Littleton. 73. A.* For they have distinct interests in Law.

Father and Son having several inheritances in divers Lands, the Father levies a Fine of it all, the Son being beyond sea at the time, dies, his Issue enters and leases it (being within Age) to *A.*, without rendring any Rent, *A.* enters, the Conusee of the Fine enters, and leases it to *B.*, yet *B.* shall not have an *ejectione firme* against *A.*, if he be outed, without expresse outing of *A.*, because as to the moyety the Plaintiff had not title; for of that the Father might levie the Fine, and the Defendant had none, because there was no Rent reserved, and so had for the present nothing in the Land, *Pascb. 32 Eliz. com. ban. Rot. 1017. Smye versus June*, and others.

Against whom Ejectment lies.

Husband
and wife.

It lies against Husband and Wife, *Lib. intra. 253. C. sect 11. Coke 9. part. 77. B. Petoyes case. Com. 187. Wortleyes case.* Where the Husband outs one by a tour of his Wifes Title.

Estranger.

It lies against a stranger that wrongfully outs one, *6 Rich. 2. Ejection. firm. 2. 21 Edw. 4. 30. pl. 25. Brian. Nat. br. 220. F. Coke 9. part. 80. A. 32 Hen. 6. 32. 27. S. to gain the possession, and to recover damages for the disturbance.*

Fcoffee.

It lies not against a Fcoffee of a Lessor, because he cannot do wrong, *Nat. br. 198. A. 21 Edw. 4. 10. pl. 1. Choke. 21 Edw. 4. 30. 32 Hen 6. 32. pl. 27. 38 Edw. 3. 33. pl. 44.* For he

he comes in lawfully as to the reversion.

Unless the Feoffee make a Deed presently upon the outing, to pass the possession to another, then it lies against him, *Nat. br. 198. A.*

Or if he enter upon the Lessee, afterwards that the Lessee had entred upon him, to regain his possession, *Nat. br. 198. A.*

Lessor grants a Reversion to *A*, the Lessee attornes, *A* outs him, the Lessee shall have an *ejectione firme*, *Nat. br. 221. A. 1 Hen. 5. 3. pl. 3.* For by the Attornment only the Rent and the Reversion passed, and not the possession.

It lies against the Heir of the Lessor, *Nat. br. 198. K.* if he out the Lessee, in case his Ancestor had power to lease.

It lies against the Lessor that outs the Lessee, Lessor. *Nat. br. 220. F. 21 Edw. 4. 10. pl. 1. Croke 30. pl. 25. 38 Edw. 3. 33. pl. 44. Coke 9. part. 80. A. Nat. br. 198. K.* without lawful cause, and he shall make title by the Lessor.

Lessor suffers a Recovery, the Recoverer outs the Lessee, he shall have an *Ejectione firme* against the Recoverer by the equity of the Statute, *21 Hen. 8. cap. 15. Nat. br. 220. 7. 198. E.* For the Recovery shall not destroy the Lease, except the Lessee be party to it.

It lies against the Lord *per Escheat*, which outs Lord one, *Nat. br. 221. I. B. 198. K.* For the Lessee's Title was paramount the Lords.

It lies against the Lord of a Villain which enters upon the Termor, *Nat. br. 221. C. 198. K.* that had a Lease of the Land before the Villain purchased it.

Tenant in common. It lies against Tenant in common *per* his companion, *Littleton* 73. *A. vid. antea.*

Of what things an Ejectment lies.

Cattel. It lies upon a Lease for Cattel, because it is a personal thing, 1 *Hen. 6. 1. Cottresmore*. granted for a certain time.

Wood. It lies of a Wood leas'd for years, *Com. 223. B. Barkleyes* case, the count there.

Chamber. It lies of a Chamber, *Mich. 30. Eliz. Ban. Regis. Brand* against *Cage*.

Tithes. It lies of Tithes, *per 32 Hen. 8. cap. 7. 2, 3 Maria, Dyer. 116 pl. 17.* the count ought to shew the nature or quality of the Tithes, *Coke 11. part. 24. B. Harpers* case. *vid. antea.*

Garden, &c. It lies of a Garden, Barn and Tithes, 9 *Eliz. Dyer. 258. pl. 16.* together, for they are all personal things.

But if all the Tithing consists of a *modus decimandi*, and a Lease be made thereof, an *ejectio-ne firme* lies not, *Coke 11. part. 25. B. Harpers* case. For there is no possession of any thing lett but things which lie in prender.

Water-courfe. It lies of a Water-courfe, *Com. 288. B. Brown. Regist. orig. 227. B. viz.* of the soil where the water runs, or for the water to pass through.

Hundred. It lies of a Hundred, because it is *liberum senementum*, 15 *Hen. 7. 8. pl. 1.* and so it may be lett for years.

Mannor. It lies of a Mannor, and the Writ *Regist. orig. 227. B. Nat. br. 220. G. Com. 229. A. kleyes* case. which consists in demesnes and services

services. *Q.* of a reputative Mannor.

The Count. *Lib. Intra. 252. A. sect. 4.*

Count of a Demise of 300 Acres by the name of a Mannor: *habendum Manerium cum*, &c. and good, 13 & 14 *Eliz. Dyer. 340. pl. 5. 7.* For this is a good description of the thing lett.

It lies of a Messuage, *Coke 11. part. 55. A. Sa-* Messuage.
vels case. For that is a thing certain.

The Count *No. Lib. intra. 184. A. sect. 1. 3.*
197. C. sect. Lib. intra. 252. B. sect. 5. 6. Coke 1.
part. A. Pelhams case.

It lies of a House, Goods and Chattels altogether.

The Count *Lib. intra. 252. B. sect. 7.* For they are all personal things.

It lies *de medietae Messuagii, Lib. intra. 256.*
D. sect. 14. The Count, *Com. 459. B. Studs case.*
For it is certain enough what it doth mean..

It lies *de tribus partibus duorum Messuagiorum,*
No. Lib. intra. 195. D. sect. 6.

It is not formal to have it of a Chappel, but it Chappel.
shall be called a House, *Coke 11. part. 25. B. Har-*
pers case. For the Plaint in Assize shall not be of
an Hospital, but shall say Messuage, 8. *Assize 29.*
For the Law takes no notice of Leases of such
things, nor what is meant by them as to lay
use.

It lies of a Mill, *No. Lib. intra. 192. A. sect. Mill.*
5. But it seems he must shew what kind of Mill
it is.

It lies of 300 Acres of Pasture, the Count Pasture.
Lib. intra. 251. D. sect. 2.

- Oxe.** It lies of a Lease of pasturing of an Oxe, *Com.* 228 *B. Brown. Regist.* 227. *B.*
- Meadow.** It lies of 100 Acres of Meadow, *Lib. Intra.* 252. *A. sect.* 13.
- Rectory.** It lies of a Rectory, 15 *Hen.* 8. *pl.* 1. 16 *Hen.* 7. 8. *pl.* 6. 13 & 14 *Eliz. Dyer.* 304. *pl.* 25. The Count *Lib. intra.* 253, *A. sect.* 9, 10. For it seems that is certainly known. *Q.*
- Reversion.** It lies not of a Reversion. *Com.* 159. *B. Thracies Case per Dyer.* For of that there can be no possession recovered.
- Land.** It lies of 100 Acres of Land: The Count *Lib. intra.* 251. *C. sect.* 1. For it shall be intended arable Land; *terra dicitur à terendo*, because broken up by the Plough.
- But it lies not of a Close containing three Acres, but shall be of so many of the Acres by name. *Coke.* 11. *part.* 55. *Savels Case.* to wit; 3 Acres called *Crowlands*, or the like; for the word Close is uncertain.
- For by *Crooke Justice, Mich.* 15 *Jac. Wicks & Sparrow*, the Land of every man is enclosed, and therefore an *Ejectione firme* cannot lie of it for the uncertainty of the word Close.
- But *Coke* 11 *part.* 55. *Savels Case* was, it seems, that if it be of a Close containing three acres of Pasture, it is good; because the quantity is shewed, and also the quality which makes it more certain, and so it was adjudged, *Mich.* 15. *Jac. Banc. Regis. Q. tamen.* For it may be more certain.

It lies not of a piece of ground called *Michels* piece, *Trin.* 38 *Eliz. Ban. Regis, Rot.* 450. *Palmer & Humphreys*; for that is uncertain both in the quantity and quality, and other Lands may be called of the same name, and so that makes no certainty in it.

It lies not of a virge of Land, 38 *Eliz. Rot.* 453. *Mell versus Moor*, for that may be uncertain, and may differ in respect of the place.

The Count Generally.

If it be of a Lease made by a Bishop, it ought Bishop to count upon the Deed, *No. Lib. Intr.* 186. *D. Sect. 2.* and set it forth; because it is not an ordinary Lease whereof the Law takes notice.

But if it be of a Lease made by the husband Husband and wife, he needs not count that it was by Indenture, *Lib. Intra.* 252. *C. Sect. 8. Coke 2. part.* 61. *B. Wiscots* case; but it sufficeth to say that they lett, and the Law will supply the rest.

If it be of a Lease made by a Person *tunc & Person. adhuc* seized of the Reversion, it is good without averring of the life of the person, 13 & 14 *Eliz. Dyer* 304. *pl. 52.* for the Lease is good whether he be alive or not.

If the Account be of a Lease made by three, where two have nothing in it, it is not good, although they all joyned in the Lease, for they could not all lett; but contrary, if he count by him only that hath right, *per Williams & Crooke, Mich.* 10 *Jac. Ban. Regis, Longs* case; for he did only in truth lett, though the others joyned.

Lease.

A Lease to commence at *Michaelmas* next after the death of *A*, the Count ought to shew that *A* is dead, 1 *Marie Dyer* 97. pl. 46. & fol. 89. 19 *Eliz. Dyer* 357. pl. 46. for else the Plaintiff shews no title, but shews matter against himself.

Demise.

The Plaintiff Counts that *A* demised to him per Indenture dated 27 *Martii*, 11 *Jac.* & *primum delibat.* 10. *decimo Aprilis eodem anno*, for 21 years from *Michaelmas* next before, and the Ejectment 12 *Aprilis*, this is good though the year be mistaken; or he may Count that by Indenture dated 27 *Martii*, & *primum delibat.* 10 *Aprilis*, *Mich.* 11 *Jac. Ban. Regis*, *Michels case*, which is more plain and certain.

The Count upon the Impar lance Roll was upon a Lease made 10. of *December*, 10 *Jac.* and upon the Plea-roll it was upon a Lease made 30 *Januarii*, 10 *Jac. babendum* from the 20. of *December* before; this is not good, *Hill.* 14 *Jac. Milward & Watt Ban. Regis*, for it cannot be the same Lease upon which he counted, so there is no certainty in the pleading to which the Defendant may answer.

The Count was that *J. S.* was seized, and so seised, leased to the Plaintiff, 9 *Eliz. Dyer* 258. pl. 16. *Com.* 416. *A. Bracebridges case*, *Com.* 187. *A. Adams case*, *Com.* 223. *B. Barkleys case*, *Com.* 530. *B. Howel & Crofts case*; here is a good colour of a Title to his Lessor, and to his own Lease.

But 14 *Eliz. Dyer* 340. pl. 57. he doth not count of the seisin, *Coke* 11. part. 3. *B. Coke* 3. part. 16. *A. Borastons case*, *Coke* 3. part. 45. *Browns case*, *Coke* 4. part. 96. *A. Lamberts case*, *Com.* 459. *B. Studs case*, *Com.* 504. *B. Snowes case*; but only declares

declares upon a Lease made unto him by the Lessor, and it seems good enough.

The Writ.

In *Wales* it may be by plaint without an original Writ, for this action is out of the Statute, 26 Hen. 8. cap. 6. Hill. 36 Eliz. Ban. Regis 610. *Griffin versus Eliot & Wilkins*, and is there still as it was at the Common Law.

It is *Vi & armis*, 1 Hen. 5. 3. Coke 9. part. 78. *A. Petoes case*, 21 Edw. 4. pl. 1. *Choke*, which always supposeth breach of the publick Peace.

But Hill. 36 Eliz. Ban. Regis, Rot. 610. *Griffin versus Eliot & Wilkins* in Error, that it may be without *Vi & armis*, 7 Hen. 6. 4. 17 Edw. 3. 1. It seems it was so held, because the Defendant might enter by colour of title to the Land.

Fuit ad terminum qui nondum preterit, 2 & 3 *Marie*, Dyer 116. pl. 71. but theres not the certainty of the time, for that is not material.

Et est pone per vad. & salvos pleg. 21 Edw. 4. 10. pl. 1. & 31. pl. 25. *Brian*; that is, the taking of bail.

It may be *bonis & catallis*, Com. 228. B. Lib. Intra. 252. B. Seti. 7, 8.

Although Regist. orig. 227. B. says to the contrary. *Quere ergo.*

But it may be without it, Com. 229. A. 199. A. *Adams case*.

The Proceß, 1. before; 2. after appearance.

The Proceß is Attach, and Distress, and Proceß of Outlawry, Nat. br. 220. H. 35 Hen. 6. 6. per Wang-

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The Process, 1. before; 2. after appearance.

The Process is Attach, and Distress, and Process of Outlawry, Nat. br. 220. H. 35 Hen. 6. 6. per *Wang-*

Wangford & Moyl, Com. 228.B. Coke 9. part. 78.
A. Peytoes case: Attachment against the person,
 Distress against the goods, Outlawry against per-
 son, and goods, and lands. The last Process in
 Law is the strictest and most severe.

The Barr.

- Accord.** Accord with satisfaction a good barr, *Coke 9. part. 78. A. Peytoes case*, because it is but in the nature of a Trespass; for here is no land in question, but only a possession.
- Duress.** *Duress* a good barr, *Lib. Intra. 253. B. sed. 10.* viz. that the Plaintiff gained the Lease by distress, for the Law hates fraud and force, and will protect no person in them.
- Ejecit.** *Non ejecit* a good barr, *si bona & catalla* are not in the Writ, 7 *Edw. 6.89. pl. 111. 19 Hen. 6. 56.* for that is a barr only as to the Land; for a man cannot be properly said to be ejected out of goods.
Quere.
 But if such words be in, *quare* whether it be good.
- Entry.** It is a good barr, that the Lessor had it but in right of his wife, and he entered after the death of the Lessor in right of his wife, *Lib. Intra. 252. D. sed. 8.*
- Surrender.** That he surrendered before the Action brought, *& quod non ejecit*, a good barr, 21 *Edw. 4. 10. pl. 1. 30. pl. 25.* Q. if there should not be a traverse; it seems it needs not.

The Judgment.

The judgment shall be *quod recuperet* against the Defendant *terminum suum prædictum venturum de & in, &c. ac dampna sua occasione. &c. & quod* Defend. *capiatur*, this suppoeth a *Vi & armis*, 9 *Eliz. Dyer* 258. pl. 16. 7 *Edw. 6. Dyer* 89. pl. 109. *Com.* 420. *A. Bracebridges case*, 515 *Snoves case. Lib. Intra.* 253. *A. Señ. 8.* 256. *C. Señ. 13.* 259. *C. Señ. 15.* *No. Lib. Intra.* 188. *A. pl. 7.* 203. *A. Señ. 8.* 212. *D. Señ. 11.* 216. *B. Señ. 13.* *Com.* 526. *A. Granthams case.*

But note, this is when the term is not ended, Note. *Coke* 9. part. 80. *A. Peytoes case*, 4. part. 104. *Lamberts case*, *Nat. br.* 220. *H. 7 Edw. 4. 6.* 13 *Hen. 7.* 20. *B. Wood*; for if the term be ended, then there is no term to come to be recovered, but only damages.

Note also, he shall recover dammages but for the Ejectment, *Coke* 9. part. 80. *A. Peytoes case*; for here is no detainer, and so no possession to be delivered by a *habere faciat possessionem*.

If the term be ended, he shall recover all in dammages, 7 *Edw. 4. 6. Fairfax*, *No. Lib. Intra.* 205. *D. Señ. 9.* *Vid. antea.*

Judgment upon demurrer; First for the Plaintiff, *Com.* 526. *Granthams case.* Secondly, for the Defendant, *No. Lib. Intra.* 197. *C. Señ. 6.* presidents for both.

Judgment for the Defendant upon a Non-suit after Evidence delivered to the Jury. *No. Lib. Intra.* 189. *B. Señ. 2.* viz. for the costs.



Quare Impedit { *Ne admittas.*
Quare non admisit.
Quare incumbavit.

Quid.

Impedire est pedem ponere in jus alienum, quod quis habet in jure presentandi, Bracton. lib. 4. cap. 6. fol. 247. A.

Hec dictio [Impedit] componitur de [in] & [pes] & unde revera ille impedit, qui nititur in jus pedem ponere in jus alienum, ubi nullum jus ei competit, nec proprietatis, nec possessionis, Bracton, lib. ibidem.

An Advowson is an interest to present an able man to a Benefice, 5 Hen. 7. 38. B. Brian and Townsend.

Advocation est incorporalis, & est jus presentandi ad Ecclesiam vacantem, Bracton lib. 2. fol. 53. A.

Jus Patronatus est { *Honorificum, to be Patron or Protector.*
Utile, to advance his Friend.
Onerosum, a burthen to his conscience, if he present one not able. Quare, for he is not Judge of the Ability, but the Ordinary,

In what Court it lies.

Bracton Lib. 3. fol. 160. A. Immediate in curia Domini Regis terminari debent placita de aduocationibus Ecclesiarum, quia si alius à Rege mandaret Episcopis de admittendo Clericum, & ipse non obtemperabit, alius à Rege coercionem non haberet, quia Episcopus ad alterius mandatum quàm Regis Clericum admittere non tenetur; & per consequens tunc temporis Rex habebatur caput Ecclesie, & Stat. de H. 8. factum fuit solummodo in affirmatione Legis.

Quare Impedit of an Advowson in Wales ought to be in Com. Ban. in England, and shall be tried in the County next adjoyning to Wales; and the reason is, because the Lords there have not power to send to the Bishop, 36 Hen. 6. 33. B. Fortescue, 35 Hen. 6. 30. pl. 35. 3 Edm. 3. 163. pl. 35. 8 Edm. 3. 319. pl. 15. 24 Edm. 3. 3. pl. 26. for the King is Supream Head of the Church in all his Dominions.

No plea to the Jurisdiction to say, that it is Ancient demean, because they cannot in their Court award a Writ to the Bishop, 7 Hen. 6. 35. for the former reason no Liberty or Franchise can be endowed with this high prerogative.

In Ban. Regis it lies for the King, for he may sue there, if he pleases, Nat. br. 32. G. 47 Edm. 3. 4. pl. 9. or in the Exchequer, as it seemeth. It seems also that it lies in Banco Regis for a common person.

The King grants *Majori Ballivis & juratis Quinque Portuum*, that they shall not be impleaded

Quare impedit.

ed ; for no Land in no Court, nor for other cause, unless it be within the Five Ports, *scil.* at *Shepway*, before the Warden of the Five Ports : this extends not to a *Quare Impedit*, 21 *Hen.* 7. 88. *pl.* 7. *Crooke*, for that is intended for Temporal matters only.

Who shall have a Quare Impedit.

Note.

He that is out of the possession of the Advowson shall not have a *Quare Impedit* ; which a man may be five ways, 1. by Presentation, 2. by discontinuance of the Land, to which the Advowson was appendant, &c. 3. by Disseisin, 4. by Descent, 5. by Recovery in the Writ of Right of Advowson, or *Quare Impedit*. He that is out of possession of an Advowson cannot Present, and therefore cannot be hindred, and so the Writ cannot lie ; for a Writ must suggest the truth, else it is naught.

Husband and Wife having an Advowson in *jure uxoris*, they shall joyn in a *Quare Impedit*, *Coke* 5. *part.* 57. *Specoss* case, 50 *Edw.* 3. 13. *pl.* 4. 7 *Hen.* 7. 2. *B.* 38 *Hen.* 6. 3. *pl.* 9. 28 *Hen.* 6. 8. *pl.* 3. for the Wife is interested in the *jus Patronatus* notwithstanding her marriage.

But the Husband may bring this without the Wife, 14 *Hen.* 4. 12. *pl.* 12. 22 *Rich.* 2. *br.* 937. for the particular wrong done to the Husband in hindering him to present *hac vice*.

The Church is void, the Wife dies, the Husband shall have the *Quare Impedit*, because the Presentation was a Chattel vested in the Husband, 21 *Hen.* 6. 56. because the Church became void during his wifes life.

The

The Husband presents, and after they are divorced, the Husband shall have the Writ, *31 Hen. 8. br. Divorce* 8. if he be hindred in this presentation, for the Divorce shall not look back.

Cestui que use shall not have it, but the Feoffees *cestui que use* of the Land; for the presentation is always firm to the Advowson which is in the Feoffees, *Crooke 17 Hen. 7. A. Fromick & ibidem, 2 Hen. 8. 160. B. pl. 1.* 2. if the Statute of Uses alter not the Law in this point.

The Lord Chancellor shall present to all Churches under 20 Marks *per annum*, which are belonging to the Crown; but not if the King have them by other Title, *Nat. br. 35. K. 38 Edw. 3. 3. pl. 14. Com. 528. B.* as by Purchase; Attainder, &c.

But *vide Br. Prescript. 86.* that at this day the Chancellor presents to all under 20 *l. per Annum*. Twenty Marks anciently was more than 20 *l.* in succeeding times, and that may be the reason.

The Defendant shall have a *Quare Impedit* against the Plaintiff, if his Clerk be not Instituted, *Nat. br. 35. C.* for without it he is not a perfect Incumbent.

The elder Brother presents and dies, the Brother by the half-blood shall not have the next Avoidance, *Nat. br. 36. E. 3 Hen. 7. 5.* because, as it seems, he shall not be inheritable of the Advowson.

But the *19 Edw. 2. Quare Impedit 177. Contra. Ergo quere*; for he may come in by the Father or Grandfather, as Heir to them.

T

Two

Quare Impedit.

Two Sisters by several venters make composition for the Presenting, and one dies before Presentment, the other shall have it, *Nat. br.* 36. E. for the Agreement lasts but during their lives, and the Executor shall take no advantage of it.

Corporation.
Bishop.
Ratione
Patronatus.

The Bishop shall have a *Quare Impedit ratione Patronatus*, if he be disturbed.

Ratione
Lapsus.

Patronage of a Deanery belongs to him of common right, 17 *Edw.* 3. 40. pl. 17. yet the King used of late times to bestow them.

The Bishop shall have a *Quare Impedit ratione Lapsus*, for by the Lapse a Title to present accrues to him *hac vice*, and the Writ shall be general, but the Count shall be of the Collation, *Nat. br.* 33. D. 17 *Edw.* 3. 64. pl. 69. *Lib. Intra.* 501. A. and shew how he is to present.

If Lapse accrue to the Metropolitan, he may put his Clerk in without the Ordinary of the place, *Doct. & Stud.* 125. B. because he is supreme Ordinary. Yet *quare* in that case, whether he shall do it without the King, who is *caput Ecclesie*.

The Ordinary is deprived after Lapse accrues, *quare* who shall have it, 7 *Edw.* 6. Dyer 87. pl. 203. it seems the King, or it may be the Metropolitan, yet be an inferiour Ordinary.

In quo casu Ordinarius loci providebit Ecclesie viduitati, Bracton, *Lib.* 2. 34. fol. 76. B.

But Bracton says, *Lib.* 3. that Lapse was but by the Council of *Lateran*, and before that the Patron might present at any time *Ecclesia vacante*.

If it be found for one Patron in a *jure Patronatus*, and the Presenter prays not to be admitted, the

the Ordinary shall present by Lapse, 34 *Hen. 6. 12. pl. 22.* for the Ordinary is to take care to have the Church provided in convenient time.

Although a *Ne admittas* be sued, yet the Ordinary of the place shall present by Lapse, *Nat. br. 48. L.* for he only looks upon the vacancy of the Church.

Lapse is, when the Patron doth not present in six Months; then the Ordinary presents by Lapse, *Doct. & Stud. 124. B.* by the Council of *Lateran*; by *Bracton*.

Although the Patron be an Infant or Feme covert, *Nat. br. 34. T. 3 Edw 3. Quare Impedit 41.* for the Law takes care of the infancy of the Church above all other infancy; in respect of the Cure of Souls.

But this rule of Lapse admits divers exceptions, *Scil.*

1. So long as the Church is void the Patron may present, *Doct. & Stud. 126. A.* for the Title by Lapse is not a Chattel vested in the Ordinary; though after six months, if the Ordinary have not presented.

2. It shall not be a Lapse of a Chappel Donative or Chantry, unless the Patron make it presentative, and then it shall, for then the nature is altered, *Nat. br. 35. E. 6 Hen. 7. br. Presentment 43. Pasch. 3 Jac. Ban. Regis, Fairstfield versus Gaire,* or be so expressed in the foundation, 13 *Edw. 4. 3.*

3. An Advowson appropriate shall not be Lapsed, *Nat. br. 35. F.* for there the Church shall be intended to be otherwise provided for, and not by presentation.

Quare Impedit.

4. If the Ordinary be named a Disturber in the *Quare Impedit*, 5 *Edw.* 3. 2. *B.* 22 *Hen.* 6. 28. And at this day he is named in the Writ to prevent the Lapse, 39 *Edw.* 3. 15. *pl.* 4. *Statham.*

For otherways the Lapse incurs, 5 *Edw.* 4. 115. for then he can take no notice of the Suit; but it seems that the Ordinary cannot collate him that was the Incumbent, and made Defendant in the suit; for this would be to prevent the trial of the Right.

5. In many cases Lapse shall not incur without notice, *viz.* where the Patron cannot take notice of the Avoidance of the Church. As,

In what
case Lapse
cannot in-
curr with-
out notice.

1. Upon a Resignation, *Nat. br.* 35. *H.* 1 *Hen.* 7. 9. 5 *Edw.* 4. 116. *A.* for this is a private act.

If the Ordinary dies his Successor ought to give notice, *Crooke* 18 *Hen.* 7. 41. *pl.* 2. *Quare* of what; it seems of the Churches being void.

2. Upon privation, *Nat. br.* 35. *H.* 1 *Hen.* 7. 9. 5 *Edw.* 4. 118. *A.* for this is also a private act, which the Patron is not bound to take notice of without notice.

Although the Incumbent be merely *Laicus*, 13 *Eliz.* *Dyer* 293. *pl.* 3. *Q.*

And although the party be party to the Suit, *Coke* 6. *part.* 29. *Greens case*, 22 *Eliz.* *Dyer* 369. *pl.* 34.

And although the Title of Lapse be devolved to the King, *per Lapsum temporis*, 18 *Eliz.* *Dyer* 348. *pl.* 12. 22 *Eliz.* *Dyer* 369. *pl.* 54.

3. If it be Litigious, 34 *Hen.* 6. 40. *B.* *Prifor. Lib. Intra.* 511. *D.* whether the Church be void or not.

4. If

4. If the Church be void by any clause of the Statute, 13 *Eliz.cap.12.* for such Statute it seems is not a general Law. *Quare tamen*, for it seems Patrons ought to take notice of it.

5. Where he shall lose his Benefice, *per 2 Edw. 6. cap. 20.* for refusing to pay Tithes, 12 *Eliz. Dyer 294. pl. 3.* for of such a misdemeanour the Patron is not bound to take notice, for it shall not be presumed the Incumbent will commit such an offence.

6. If one have a Benefice within 8 *l. per ann.* and takes another, and be Inducted, *Coke 4. part. 79.* and so forfeit the former.

7. If the former be of 8 *l.* without Induction, no Lapse without notice, *Coke 4. part. 79. B. Digbies case.*

But after Induction no notice is requisite, *Coke 4. part. 75. 7 Eliz. Dyer 237. pl. 29. 8 Eliz. Dyer 255. pl. 5.* for that is a notorious act, whereof the Patron may take notice.

And the value of the Living shall be according to the true value, and not according to the Book of Tithes and First-Fruits, 7 *Eliz. Dyer 237. pl. 29.* which is at an undervalue.

8. Upon refusal of a Clerk to be admitted, *Nat.br. 35. I. 15 Eliz. Dyer 327. pl. 7.* for of this the Patron cannot take notice, nor shall he presume it.

But *Crooke 18. Hen. 7. 49. pl. 2. per Frowick*, if it be a Spiritual Patron, then it is not requisite to give notice, because he is presumed better knowing in such matters than a Lay-Patron.

So for Avoidance *per* Creation of the Incumbent to be a Bishop, Cession, or Death, *Doll.*

Quare Impedit.

4. If the Ordinary be named a Disturber in the *Quare Impedit*, 5 *Edw.* 3. 2. *B.* 22 *Hen.* 6. 28. And at this day he is named in the Writ to prevent the Lapse, 39 *Edw.* 3. 15. *pl.* 4. *Statham.*

For otherways the Lapse incurs, 5 *Edw.* 4. 115. for then he can take no notice of the Suit; but it seems that the Ordinary cannot collate him that was the Incumbent, and made Defendant in the suit; for this would be to prevent the trial of the Right.

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1. Upon a Resignation, *Nat. br.* 35. *H.* 1 *Hen.* 7. 9. 5 *Edw.* 4. 116. *A.* for this is a private act.

If the Ordinary dies his Successor ought to give notice, *Crooke* 18 *Hen.* 7. 41. *pl.* 2. *Quere* of what; it seems of the Churches being void.

2. Upon privation, *Nat. br.* 35. *H.* 1 *Hen.* 7. 9. 5 *Edw.* 4. 118. *A.* for this is also a private act, which the Patron is not bound to take notice of without notice.

Although the Incumbent be meerly *Laicus*, 13 *Eliz.* *Dyer* 293. *pl.* 3. *Q.*

And although the party be party to the Suit, *Coke* 6. *part.* 29. *Greens* case, 22 *Eliz.* *Dyer* 369. *pl.* 54.

And although the Title of Lapse be devolved to the King, *per Lapsum temporis*, 18 *Eliz.* *Dyer* 348. *pl.* 12. 22 *Eliz.* *Dyer* 369. *pl.* 54.

3. If it be Litigious, 34 *Hen.* 6. 40. *B.* *Prisot. Lib. Intra.* 511. *D.* whether the Church be void or not.

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4. If the Church be void by any clause of the Statute, 13 *Eliz. cap. 12.* for such Statute it seems is not a general Law. *Quare tamen*, for it seems Patrons ought to take notice of it.

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6. If one have a Benefice within 8 *l. per ann.* and takes another, and be Inducted, *Coke 4. part. 79.* and so forfeit the former.

7. If the former be of 8 *l.* without Induction, no Lapse without notice, *Coke 4. part. 79. B. Digbies case.*

But after Induction no notice is requisite, *Coke 4. part. 75. 7 Eliz. Dyer 237. pl. 29. 8 Eliz. Dyer 255. pl. 5.* for that is a notorious act, whereof the Patron may take notice.

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8. Upon refusal of a Clerk to be admitted, *Nat. br. 35. I. 15 Eliz. Dyer 327. pl. 7.* for of this the Patron cannot take notice, nor shall he presume it.

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So for Avoidance *per* Creation of the Incumbent to be a Bishop, Cession, or Death, *Doct.*

Ex Stud. 116. B. 5 *Edw.* 4. 115. *Quere* of Death.

After privation the Patron grants the Advowson to *A*, the Ordinary collates *A*; he cannot be removed, for notice ought not to be given him, for it was void to all but the Grantor; for the Ordinary is not bound to take notice of the Grant to *A*, because it is a private act, *Mich.* 42 & 43 *Eliz. Com. Ban. Rot.* 3579. *Leake* against the Bishop of *Coventry*.

Notice is to be given as to the Lapse only, for as to the presentation, the Patron may be put out of the possession of the presentation for some other cause, although no notice is given him, *Pasch.* 39 *Eliz. Com. Ban. Scriven* versus *Episcopus Lincoln*.

Parson.

A Parson shall have a *Quare Impedit* for the Vicarage, for of common right it belongs unto him to present, *Nat. br.* 33. *U*.

For if the Vicarage be void, and the Parson be made a Bishop, yet he shall present, for it was a Chattel vested in him whilst he was Parson, *Nat. br.* 34. *N.* 24 *Edw.* 3. 26. *Q*.

A Parson Imparsonnee or Incumbent, shall have a *Quare Impedit*, 17 *Edw.* 3. 51. *pl.* 25. for the Vicarage.

Prebendary.

For a Prebendary, although the Prebend resign after usurpation upon him, 26 *Edw.* 3. 3. *Q*.

Dean and Chapter.

The Chapter brought a *Quare Impedit* against the Dean, and good; for their possessions are several, though they be one body Politick, 9 *Edw.* 3. 134. & *fol.* 354. *pl.* 33. 17 *Edw.* 3. 64. 40 *Edw.* 3. 28. B. *Finchden*, 7 *Edw.* 3. *Quare Impedit* 72. *Lib. Intra.* 500. *A*.

An Hospital which hath no Spiritual possessions, nether are a Colledge, nor have a Seal, yet the Matter shall have a *Quare Impedit*. Aggregate

For a Corporation mixt, as in case of the King, 1. In right of the Crown, *Nat. br. 32. E. the Writ.* Corpora-
tion mixt.

2. By reason of Lapse incurred, for this makes him Supream Patron, *Doct. & Stud. 124. B. Com. 498. 18 Edw. 3. 19.*

Therefore after Lapse accrued to the King, the Patron cannot present, *Doct. & Stud. 126. A. 10 Eliz. Dyer 277. pl. 55.* for the Kings Title shall be preserved and preferred above all other Titles.

Nor the Ordinary collate after Lapse is accrued to the King, *17 Eliz. Dyer. 339. pl. 47.* for the same reason.

But in case, where notice is requisite, the King cannot present without notice, *18 Eliz. Dyer 348. pl. 12. 22 Eliz. Dyer 369. pl. 54.* for the King shall not take advantage against one, where there was no negligence in the party. In his own right.

If the Dean of the Chappel Royal presents not within six months, the King shall present, *Nat. br. 34. F. 27 Edw. 3. 84.* Chappel-Royal is the Kings Chappel, or of his foundation, and he is instead of the Ordinary.

A Parson created is a Bishop, the King shall present, *21 Edw. 3. 31. pl. 14. & fol. 41. 11 Hen. 4. 37. vide 6 Eliz. Dyer 228.* for the Patron could not have presented till the death of the Parson, and so here is but putting in one person for another, and so he hath no injury. Creation.

Cr. L.

Quare Impedit.

21 *Edw.* 3. 5. *pl.* 13. the Writ was, *quia persinet ad Regem presentare ratione Episcopatus nuper vacantis*, and good, when a Living fell, which belonged to a Bishoprick, *sede vacante*.

The Count, *Lib. Intra.* 530. *C. sect.* 15.

And the King needs not say in the Count, for that the Temporalities were seized, 42 *Edw.* 3. 7. *pl.* 27. for that shall be supposed; for by the death of the Bishop the Temporalities are immediately in the Kings hands.

If a Church be void during the time that the Temporalities are in the hands of the King, although he makes restitution of the Temporalities, yet the King shall present, *Nat. br.* 33. *N. Stanford* 44 *Edw.* 3. 17. *pl.* 8. 18 *Edw.* 3. 22. *pl.* 39. for it was vested in the King by the vacancy, whilst the Temporalities were in his hand.

If the Church become void, and the Bishop dies, the King shall have it, and not the Executors, *Nat. br.* 33. 9 *Edw.* 3. 2. *Quare Impedit* 11. because the King is now Patron, and finds the Church empty.

And although the Bishop collate, *Nat. br.* 34. *K.* 11 *Hen.* 4. 9. *A.* 24 *Edw.* 3. 30. 44 *Edw.* 3. 3. for that makes not the party collated to be Incumbent, but his Induction.

But if he die after Induction, although it be the same day, the King shall not have it, 44 *Edw.* 3. 3. for then the Church was full.

If a Lapse accrues to the Bishop, who dies, the King shall present, 25 *Edw.* 3. 53. *pl.* 20. for he is in place of the Bishop.

If a Lapse accrues after the death of the Bishop, the King shall present, *Nat. br.* 34. *G.*
in

in respect of the Temporalities in his hands.

So if he have judgment to have the Temporalities, 21 *Edw.* 3. 29. for that is all one as if he were in possession of them. Outlawry.

By Outlawry of the Patron in a personal Action, the King shall present, *Nat. br.* 34. R. 8 *Rich.* 2. *Quare Impedit* 200. 21 *Hen.* 6. 56. if the Church become void during the Outlawry. *Quare*, if afterwards the Outlawry be reversed before the King presents.

A enfeoffs *B* of a Mannor, to which, &c. and before was outlawed, and presents per permission of *B*, the King shall present, because the presentation is a Chattel, 5 *Hen.* 5. pl. 4. and was forfeited to the King by the Outlawry.

For Simony, upon 31 *Eliz.* cap. 6.

The Pleadings, *No. Lib. Intr.* 405. C. fell. 516. B. 531. D.

Note per 25 *Edw.* 3. cap. 1. the King shall not present in anothers right, but for the Avoidance in his own time, 11 *Hen.* 4. 7. pl. 16. which is in his own right.

Note, if the King presents one that dies before Induction, the King shall present again, for he had not a compleat presentation before, *Coke* 9. part. *Holts* case, vide *Regist. orig.* 31. B. for his Clerk was never in.

But if the King have title *hac vice*, and another presents *A*, which dies, the King hath lost his turn, *Coke* 7. part. 28. *Baskerviles* case, *No. Lib. Intra.* 489. *A.* for he was to have but this numerical presentation, and is not like the having of the next presentation.

Yet

Yet if one qualified to have two Benefices takes another incompatible, the first is void by two years; the Patron presents where the King ought to have presented, and after Induction his Clerk refuses to pay his Tenths, and this is certified according to the Statute of 26 H.8. the Bishop being Patron collates, the King shall present notwithstanding, for this refusal is as it were a Resignation to the Bishop, which shall be intended a Collusion betwixt him and the Bishop, to take away the Title of the King, *Mich. 29 & 30 Eliz: Com. Ban. Rot. 2299.* the King against the Bishop of Lincoln.

12 *Eliz. Dyer 292. pl. 70. 25 Edw. 47.* the King presents to a Prebendary *ratione temporarium*, and revokes it before the Installment of the Prebend; and yet he is Inducted, and the King confirms it, and after he is made a Bishop, the Prebend dies, the King shall present again, and not the Bishop, for the confirmation of the King was void, because the Prebend was not in *ex presentatione Regis*, for that was revoked before the Confirmation.

Nat. br. 38. D. the King recovers a Prebendary, and gives it by Letters Patents to A, who dies, the King gives it to B, he shall have Writ to the Justices to make execution for him, *viz.* of that Court where the Prebendary was recovered.

Disseisee.

Disseisee shall have a *Quare Impedit* before his entry into the Mannor, to which the Advowson belongs, 21 *Hen. 6. 9. B.* 19 *Hen. 6. 33.* 33 *Hen. 6. 33. B. Nat. br. 33. Q.* 24 *Hen. 8. Dyer 5. pl. 6. Crooke 6 Hen. 8. 169. A. Pollard*; for the Advowson was not divested by the disseisin.

Disseisor

Disseisor presents, Disseisee enters into the Mannor to which, &c. and presents, he shall have a *Quare Impedit*, if it be within six months, 14 Hen. 6. 24. *Fultborp*; for by his entry he hath regained the Mannor, and avoided the Disseisors presentation.

Add if the Disseisor presents, and the Disseisee enters into the Mannor, to which, &c. and enfeoffs B thereof, with the Advowson, the Church voids, B shall have a *Quare Impedit*; for by the entry of the Disseisee he was in the possession of the Advowson, 3 Hen. 4 7. pl. 33. 14 Hen. 6. 16. pl. 52. and so it passed with the Mannor by the Feoffment.

But 33 Hen. 6. 33. *Priset* to the contrary; for there it is said, that until Recovery the Disseisee shall not have the Advowson. *Q.*

Disseisor dies seized of a Mannor to which the Advowson belongs, the Disseisee shall not have a *Quare Impedit*, 24 Hen. 8. *Dyer* 5. pl. 6. 33 Hen. 6. 33. B. *vide* 19 Hen. 6. 33. in respect of the descent, which takes away his entry into the Mannor, and so he must recover the Mannor before he can have the Advowson.

But if it void in the time of the Disseisor, the Disseisee shall have it, although the Disseisor died seized afterwards of the Mannor, to which, &c. 24 Hen. 8. *Dyer* 5. pl. 6. for there was no descent barr when the Church became void, and so it was a Chattel vested.

A Disseisor suffers a Usurpation, Disseisee enters into the Mannor, Disseisee shall have a *Quare Impedit*, *Nat. br.* 36. F. 14 Hen. 6. 14. 3 Hen. 4. 7. for the usurpation is defeated by the entry of the Disseisee.

Executor

Executor.

Executor of the King shall not have a *Quare Impedit*, but the Successor of the King, for this is a Chattel Royal, 7 Hen. 4. 25. pl. 3. 1 Edw. 3. 17. pl. 8. 5 Edw. 3. 149. pl. 15. which shall not go to an Executor, for it is vested in the Crown.

Executor of a Common person shall have a presentment to a Church, which was void in the time of the Testator, although the Testator were but Tenant in tail, Nat. br. 33. P. & U. because it was a Chattel vested in the Testator.

Although the Heir be in ward to the King, Nat. br. 33. R. for the King in respect of the Wardship shall not be in a better condition, than the Heir should have been, if he had been at full age at the death of his Ancestor.

If one recover in a *Quare Impedit* and die, the Heir shall not have execution, but the Executors, 9 Hen. 6. 57. A. Rolfe; for the recovery made it a Chattel vested in the Testator.

Infant.

At the Common Law the Infant was bound by suffering an Usurpation, 35 Hen. 6. 6. that is, to suffer one to present in his stead, 31 Edw. 3. *Quare Impedit* 186. 10 Edw. 2. *Quare Impedit* 43. for the Common Law respects the Churches good, before Infants, Widows, or Orphans, although it be tender of all.

But at this day he is not, per Westm. 2. cap. 5. The Law before seemed too hard against Infants, who may be presumed not conscious of the Law, and ignorant of his title.

Unless he be a Purchaser, 10 Edw. 2. *Qu. Imped.* 43. 35 Hen. 6. 60. Nat. br. 31, & 34. It seems he is not within the Statute: He may, if a Purchaser, be

be presumed not so well consulant of his title as if he had it by descent.

Or that the party that usurps be remitted to an eigne title, *Nat. br.* 35. *M.* for then the presentation did not belong to the Infant.

If he suffer Usurpation, having it by descent, he is bound till full age, 16 *Edw.* 3. 9. *Quare Impedit* 62. for he shall be judged better consulant of such estate than of a purchased estate; and he might have presented himself.

And if in his minority he suffer Usurpation, and at full age enfeof B of the Mannor, to which, &c. yet B shall not be in, *Nat. br.* 34. *X.* because it was out of the Feoffor at the time of the Feoffment, and so it passeth not.

But by 16 *Edw.* 3. *Quare Impedit* 67. *Coke* 6. *part.* *Boswells* case, the Infant is also bound in all these cases. *Q.*

The Usurpation at the Common Law shall bind *Feme*
a Woman Covert, 35 *Hen.* 6. 6. *Prisot*, 31 *Edw.* 3. *Covert.*
Quare Impedit 180. 10 *Edw.* 2. *Quare Imped.* 43.
vid. antea.

The husband suffers an Usurpation, where the Woman is the purchaser, she shall not have a *Quare Impedit*, but the husband; but if she had it by descent, she shall have the next turn, *per Westm.* 2. *cap.* 5. *Nat. br.* 34 *S.* to present.

The husband discontinues one Acre of his wives Mannor, to which an Advowson is appendant with the Advowson, the wife may not present, unless after the Alience sever the Advowson from the Acre, *Nat. br.* 32. 17 *Edw.* 3. 5. *pl.* 12. for then the Advowson is not appendant to any thing.

The

Feoffee or
Grantee,
1. of the
King; 2. of
another.

The King grants the Advowson in Fee, the Church being void, the Grantee presents, *Nat. br.* 33. N. for the grant shall be taken most beneficially for the Grantee.

But this is intended when the King hath but one Title to the Advowson, 10 *Eliz. Dyer* 269. *pl.* 19. 9 *Edw.* 3. 26. *Stamford. Prerogat.* 44. 16 *Hen.* 7. 7. 18 *Edw.* 3. 22. *A. Pole.* for if he have two, the Grant shall not be taken to two intents.

For if he had two Titles the Grantee shall not present, 13 *Eliz. Dyer* 300. *pl.* 36. 18 *Eliz. Dyer* 300. *pl.* 36 *Eliz. Dyer* 348. *pl.* 12. for it is incertain which Title was granted, nor can be known with what Title he presents.

But 9 *Edw.* 3. 348. *pl.* 24. the orders of the Templers were dissolved, the Church belonging to them to present to voids, and after the Advowsons, &c. appendant to their mannors, were given to the Hospitallers *per* Parliament; the King shall not have the presentation, for here the King had but one Title, and also acts of grace shall be construed largely against the King.

A Common person grants the Advowson in Fee when the Church was void, the Grantee shall not have the presentation, because it is a thing in action, 11 *Hen.* 4. 54. which lies not in grant, but may pass by Act of Parliament.

So of a Feoffment of Land, to which an Advowson is appendant, 24 *Eliz. Staffords* case, the Church being void at the time of making of the Feoffment.

But if the Feoffment be upon condition, and the Church becomes void, and afterwards the
Feoffor

Fooffor enters for the Condition broken, the Feoffee shall present, because it is a Chattel vested in him, 24 *Edw.3.* before the entry of the Fooffor.

If there be a Feoffment of the third part of a Mannor, the Feoffee shall not have the third presentment, 6 *Edw.3.215. A.* for the Advowson is not appendant to it, for it cannot be appendant by parcels.

Unless it be with three presentments, 9 *Edw.3.341. pl.31. viz.* where three present to the Advowson by turn. *Q.*

Grantee of the next Avoidance shall have a *Quare Impedit*, 39 *Hen.6. Quare Imp. 95.* for he hath a good Title to present *hac vice.*

The Count, *Lib. Intra. 520.D.*

And if the Grantee of a Mannor to which an Advowson is appendant, levies a Fine of the Advowson, yet this puts him not out of possession of the Advowson, 19 *Edw. 3. Quare Imped. 154.* because it puts him not out of possession of the Mannor to which it appertains.

Grantee by Parliament suffers a usurpation; this doth not put him out of possession, 16 *Hen. 7.8. Keble*, because he is in by Title of so high a nature, which shall not be intercepted by an ordinary act of the party.

Grantor by Fine usurps; this shall not trouble the Grantee, 31 *Edw. 1. Quare Impedit 187.* for a Fine is of a high nature, and barrs the Conusor of all right.

Tenant in tail for life, or years, grants their Estate in an Advowson, the Church voids, the Grantee shall present, because it is a Chattel vested, 9 *Edw 3.366. pl.4.* in the Grantee during the estate tail, and for life. If

Daughter.

If the Daughter suffers a Usurpation, the Son afterwards born shall not have a *Quare Impedit*, 11 *Edw. 3. Quare Impedit* 138. for he was not in *rerum natura* at the time of the usurpation, and so had no right.

Founder.

A Founder of a Church shall have a *Quare Impedit* of common right, for he is presumed Patron, and because he enters upon the dissolution, 12 *Edw. 4. 30. A. Catesby. Q.*

Joynt-tenants.

One of them, viz. Joyntenants, shall not have a *Quare Impedit* against the other, *Nat. br. 34. V. 14 Eliz. Dyer 304. pl. 54. 33 Hen. 6. 11. B.* in respect of their undivided and undistinguishable interest.

Nor against a Stranger; but they must joyn, or else the Disturber might be twice sued for one disturbance.

But where one pleads Joynttenancy of part of the Advowson, the Plaintiff ought to entitle himself to the whole Advowson, or shew that he is Incumbent of all, 31 *Hen. 6. 51. B.*

Joynttenancy of part is no Plea, 14 *Hen. 6. 14. 14 Hen. 4. Joyntenants 32.* for it cannot be; for Joyntenants are seised *per my & per tout*.

Joynttenant presents sole; this shall not put his Companion out of possession, 27 *Hen. 8. 13.* for it shall be intended, he intended it not but to present so, as the Law requires.

But 11 *Hen. 4. 44. Hanford è contra. Ergo quare.*

If they make composition, and present accordingly, yet afterwards, if one be disturbed, he shall not have an Action without his Companion, 20 *Edw. 3. 72.* for that composition concerns not Strangers, but is only a private act betwixt themselves.

Nomi-

Nominator to a Living shall have a *Quare Impedit* against him that presents, *Nat.br.33. A.* because by the Nomination he had the fruit of the Advowson, 14 *Hen. 4.11. pl.9.* 14 *Edw. 4.2.pl. 2.* 32 *Hen. 8. Dyer 48. pl. 16.* 22 *Edw. 3.77. pl. 103.* 24 *Edw. 3. 69. pl.78.* And the Writ shall be general, *Nat.br.33: A. 24 Edw.3.69. pl.78.* as in case of Patronage.

Nominator to a Living.

For if it be [*Nominare*] this shall abate the Writ, 14 *Hen. 4.11. 21 Hen.6.17.A.* for the Law takes no notice of such a term; but the Count shall be special, *Nat.br. 33. A.* and set forth the whole matter how he is enabled.

For in 14 *Hen. 4. 11. per Hill.* Nominator is in a manner the very Patron, and so taken notice of in Law as such, 24 *Edw.3. 69.*

A grants to *B* that he shall have the next Nomination to the Church of *D* when it is void, and that he shall present his Clerk to the Bishop, if the Grantee be disturbed, he shall have a *Quare Impedit*, for he is the Patron *hac vice* by the words of the Grant, *Crooke 2 Hen. 8. 161. pl. 1. per Read.*

The eldest Parson shall have the first presentment, *Nat.br.33.L. 38 Hen. 6.9. pl. 19. Doct. & Stud. 115.B. Nat.br.34.V. Crooke 12 Hen.7.1: A.* and so in order by turns, if there be more than two.

Parsoners

So the Husband of the eldest being Tenant by Courtesie, *Nat.br.33.L. 5 Hen. 5.10. pl.24.* for he is in upon his wifes right and title, originally.

So he that hath the estate of the eldest, for his interest passeth with the estate, *Nat.br.34.V. but Crooke 18 Hen. 7. 49. pl. 5. by Frowicke*, if he grant

Quare Impedit.

grant this when the Church is void before any presentment by him; the Grantee shall not have the first presentment, because he is a stranger in blood, and the Feoffee cannot claim that privilege in Law.

Where a Parcener grants his Estate to *B* (the Church being void) yet the Parceners ought to joyn in a *Quare Impedit*, 11 *Hen.* 5. 54. in respect of their joyn't right and title at the time of the Grant.

The pleading of a Partition between Parceners, *No. Lib. Intra.* 468. *B. & C.*

If they make partition to present by turn, and the youngest dies, his Heir in ward to the King, he, viz. the King, shall present during the Nonage, 21 *Edw.* 3. 32. *pl.* 14. 22 *Edw.* 4. for his wardship shall not make him lose his right to present.

Parceners agree to present by turn, this is a good partition as to the possession, 20 *Edw.* 3. *Quare Imp.* 63, 65. viz. of the Advowson.

But *Nat. br.* 33 *L. è contra*, because the Inheritance is not. *Quare ergo.*

De d. & Stud. 11. the King shall have the first presentment, the eldest the second. *Quare* in what case.

But 38 *Hen.* 6. 9. *pl.* 19. the Issue of the eldest Coparcener was in ward to the King, there three others by their pleading shew a partition of the Mannor in *Carvel*, except the Advowson, and sue to the King to present, after the fourth sues for the Advowson; the Issue of the eldest shall present, because the presentment of the King was in right of them all, and not in right of the turn of the Issue.

Upon

Upon composition to present by turn, if it be enrolled in a Court of Record, they shall have a *Scire facias* one against the other, when their turn comes to present, *Nat.br.34.H. 21 Edw. 4.6. pl. 36. B.*

So against a Stranger that usurps in their turns, if the partition be of Record only, the Law takes no notice of it, *Nat. br. 36. C.* but they may joyn in a *Quare Impedit* against a Stranger, for the Law takes notice of their joyn't title, and also present in common; but by this the composition is waved, *Nat.br.36.D.* for it shews, they rely not upon the composition, but hold there to that way of presentation that the Law gives them.

The surprize of one Parcener shall not put the other out of possession, when his turn comes again, for he gains no title by it, *Nat. br. 34. J. 6 Edw. 3. 210. pl. 13. 7 Edw. 3. 239. pl. 27. 17 Edw. 3. 38. pl. 10. 30 Edw. 3. 15. pl. 15.*

Although that it be made by the King in right of one Parcener, being in ward to the King, 22 *Edw. 4. 8.* for the same reason.

My Procurator presents as to his own Advowson, as Procurator to me, by this I shall have again the possession, and out him, *Nat. br. 35. O. 17 Edw. 3. 60. pl. 60.* for by presenting as my Procurator he acknowledgeth my right.

Procurator.

Recoverer in right of an Advowson suffers an usurpation, he shall not have a *Quare Impedit*, 45 *Edw. 3. Quare Imped. 139.* because he was not in actual possession of it by the Recovery, and so hath but a meer right still.

Recoverer.

Tenant for life or years of an Advowson suffers an usurpation, the Lessor shall not be aided by her.

his

Quare Impedit.

his own, *Westm.2. cap. 5.* for it is a fault to lett it to such a Tenant.

But his Heir shall be, *Nat.br.31.G.* for he is in no fault.

But 33 *Hen.6.12. pl.3.* 34 *Hen.6.27 pl.8. & contra.* Ergo *quare.*

If Tenant for years or a Gardein brings a *Quare Impedit*, and a Writ be awarded to the Bishop for the Defendant, yet the Tenant of the Franktenement is not out of possession, for the Presentee is in by course of Law, 50 *Edw.3.14. B. Coke 6. part.50. B. Boswells case*; and therefore the Tenants or Gardians interest shall not be prejudiced.

Queen.

The Queen shall have it alone, because she is a sole person exempt by the Common Law, and cannot joyn with any in a Suit; and the Writ shall not say *unde queritur*, because she shall not find Pledges, 18 *Edw.3.2. pl.6.* for it were dishonourable for her to find Pledges, for she shall be presumed to be sufficient, and so deal justly with all.

Lord.

The Lord that hath an Advowson by Escheat, shall have a *Quare Impedit*, the Count, *Lib. Intra. 500. D.* in respect of his Title accrued by Law.

If an Abby, which hath an Appropriation, be dissolved, the Lord that hath the Manner to which it was appendant shall have a *Quare Impedit* to present to the Advowson, *Nat.br.33.K. Coke 2.part.47. B. Canterburies case, 21 Hen.7.4. B. Frowick, 20 Edw.4.14. B. Com. 501. Gren-dons case*; for by the dissolution the Appropriation is extinguished, and the Lord in of his old right to the Patronage,

Tenant

Tenant in tail suffers an Usurpation, he hath no remedy, for it was his own Latches to suffer it; but his Issue shall have a *Quare Impedit*, 49 *Edw.* 3. 14. *pl.* 9. This is by the equity of *Westm. 2. cap.* 5. *Coke 6. part.* 50. B. *Boswells* case, who shall not be prejudiced by his Fathers act.

Tenant in Tail.

Tenant in tail of a Mannor to which an Advowson belongs, enfeoffs A of the Mannor, which grants the Advowson to B, and re-enfeoffs the Tenant in tail; the Issue shall not have a *Quare Impedit*, because the other had no remedy, *Nat. br.* 35. B. 19 *Hen.* 6. 30. and so shall not be in a better condition, and by the Grant of the Advowson apart it ceaseth to be appendant.

Tenant in tail leases his Estate over, the Church voids, he dies, the Issue in tail shall present, 9 *Edw.* 3. 10. and not the Lessee of the Mannor; for the presentation is not comprized in the Lease.

Tenant in tail suffers an Usurpation before the Statute, the Issue shall not have a *Quare Impedit* after the Statute, 8 *Edw.* 2. *Quare Imp.* 167. for before he was in no better a condition than his Ancestor, and the Statute was made for the benefit of the Issue in tail.

Tenant in Dower shall have the third presentment, where she is Dowable of the Thirds, *Nat. br.* 33. L. 33 *Hen.* 8. *br. Presentment* 55. 15 *Hen.* 7. 17. Q what she shall have when she is Dowable of the half, during her Widowhood, by the custome of Gavel-kind.

In Dower.

So if she have the third part of a Mannor to which an Advowson belongs, *Nat. br.* 34. Q. 6 *Edw.* 3. 215. in the respect of interest in the Mannor, proportionable to it.

For life.

Tenant for life shall have a *Quare Impedit*, in respect of his Freehold.

The Count, *Lib. Intra. 513. A.*

But if he suffers an Usurpation, he shall not have a *Quare Impedit* at any time after, 22 *Hen. 6. 26. B.* for it was his own Latches to suffer it, for he might have brought his *Quare Impedit* upon the first disturbance.

For years,

Tenant for years shall have a *Quare Impedit*, although he doth not present within the term, *Nat. br. 34. B. 9 Edw. 3. 338. pl. 6. 39 Hen. 6. 39. viz.* if the Church become void during the term, and no Lapfe incurred, for it was a Chattel vested.

In common.

Tenant in common shall not have it without his Companion, *Nat. br. 34. V. 14 Eliz. Dyer 304. pl. 52. 33 Hen. 6. 11. B.* in respect of their common interest, and that the Disturber may not be doubly vexed.

Traverse.

He that traverseth an Office, and hath the Land in Farm, shall have the presentment, if the Church be void during the time of his Lease, so it be found for him, although no mention be made of the Advowson, *Nat. br. 34. P.* for it goes with the Land.

Note.

Note, that the King upon an Office found for him, shall not put the Patron out of possession, without admission and institution of his Clerk, *Coke 9. part. 96. A. Keynells case*; for that is the only way to gain possession of an Advowson, and an Office may not be true, for it is traversable.

Against

Against whom a Quare Impedit lies.

It lies against a Patron sole, 29 *Hen. 6. 57.* 19 Patron
Hen. 6. 67. pl. 14. & fol. 73. pl. 1. & fol. 75. pl. 5. sole.

But then the Incumbent shall not be removed,
29 *Hen. 6. 57. 7 Hen. 4. 34.* for if he be, it lies
also against the Disturber.

Unless there be no Incumbent at the time of
the Writ brought, 29 *Hen. 6. 57.* 19 *Hen. 6. 67.*
pl. 14. & fol. 73. pl. 1. & fol. 75. pl. 5. for then
the Patron only must necessarily be the Distur-
ber.

If it be against an Incumbent sole it shall abate, Incum-
3 *Hen. 4. 2. Quare Impedit 113. 41 Edw. 3. 2.* bent sole.
Br. Quare Imped. 24. vide 47 Edw. 3. 10. for he
comes in under another mans right, who must be
named in the Writ.

But note, this is intended when the Inheritance, Note.
estate or interest of the Patron in the Patronage,
is to be devested by the Judgment, for otherwise
he ought not to be named, *Coke 7. part. 26. B.*
Halls case, for it concerns him not to be made a
party.

When there is no Patron, the Writ shall be a-
gainst the Incumbent sole, 13 *Hen. 8. 12. 4 Hen.*
8. 3. for there can be no other Disturber but he.

When the King presents, it lies against the In-
cumbent sole, because the King shall not be sued,
Coke 7. part. 26. B. Halls case, 92 Hen. 8. Dyer 48.
pl. 16. 24 Edw. 3. 77. pl. 103. Crooke 19 Hen. 7.
53. pl. 9. But by Petition he may be sued too, and
the Law intends he will do all his Subjects right
without suit.

Plaintiff.

It lies for the Defendant against the Plaintiff, if the Clerk of the Defendant be not instituted, *Nat.br. 35. C.* and he be disturbed by the Plaintiff. It seems this is meant where there is a cross Suit berwixt them.

But not of the same presentation, if the Plaintiff have brought his Writ, *19 Hen. 6. 67. pl. 14. & fol. 73. pl. 1. fol. 75. pl. 5. 22 Edw. 3. 4. pl. 10.* for he that first commences his Action shall first determine his right.

Sheriff.

The King grants a Free Chappel to *B* by Patent, if the Sheriff will not put him into possession, he shall have a *Quare Impedit* against the Sheriff, for this is in the nature of a Lay fee, and belongs not to the Ordinary, and the Writ shall be general, *14 Hen. 4. 11. pl. 9. Haukeford*, as in other *Quare Impedit*s; but the Count must be special, as it seems.

Quare Impedit, of what disturbances it lies.

Disturber.

If a Disturber presents three times within the six months; *Quare Impedit* lies for the former, *Nat.br. 35. R.* of the Presentations; for there began the first cause of action.

The Ordinary refuses to grant a *Jure Patronatus* to try the Title, or to admit the Clerk, a *Quare Impedit* lies, *33 Hen. 6. 12. 32. 34 Hen. 6. 11. 35 Hen. 6. 38.* for this is a disturbance to the Presentation.

So if it be Litigious, and the Ordinary admit a Clerk without awarding a *Jure Patronatus*, *22 Hen. 6. 25. Bre. 83.* for this is to disturb by forejudging of the right.

So

So if he do not admit him within convenient time, 22 Hen. 6. 29. for delays are disturbances, and accounted denials; for Justice ought to be speedily done.

The Bishop refuses to admit the Clerk, because it was first found for another in a *Jure Patronatus*; this is a disturbance, Nat. br. 35. G. for he is not to take notice of the Suits between the parties.

Unless the *Admittas* be delivered to him, 2 Hen. 6. 44. for that is the Act of the Court, of which he is bound to take notice.

Quare Impedit, of what things it lies.

And if one had been disturbed before the Statute, yet he should have had the Writ, because the Statute refers before as well as after, 6 Edw. 3. 221. pl. 51. Q.

The Count, Lib. Intra. 646. C.

It lies of a Chappel, 22 Hen. 6. 25. B. antea. Chappel.

And it lies by Westm. 2. cap. 5. Lib. Intr. 52. A. scilicet. 2.

The Writ shall be *Presentatum ad Capellam liberam*, Nat. br. 32. H. 8.

But if the King brings a *Quare Impedit* of his Free Chappel, it shall be *presentare ad Prebendam* in his Frank Chappel, Nat. br. 33. & 16 Edw. 3. 3. nota differentiam.

It lies of a Deanary, 17 Edw. 3. 40.

Deanary.

It lies of *Domus Sancti Martini*, in Bristol, Nat. br. 33. G.

Domus S.
Martini.
Hospital.

It lies of an Hospital, Nat. br. 33. G. pro Westm. 2. cap. 5. the Count, Lib. Intra. 506. C. Scilicet. 1. because they are all presentative.

It

Quare Impedit.

It lies not *de medietate Advocationis*, neque *de Advocatione medietatis Ecclesie*, Nat. br. 33. A. 33 Hen. 6. 11. B. Prifot, vide 4 Hen. 6. 15. B. for it must be of an entire thing, or at least so supposed by the Writ, for the Law takes no notice of such moieties.

But in such cases the Writ shall be general (*scil. ad Ecclesiam*) and not (*ad medietatem Ecclesie*;) but the Count shall be special, and set forth special Title, Coke 5. part. 102. *Winfors case*, 16 Edw. 6. Dyer 78. pl. 44.

But where there are two several Patrons, and two several Incumbents of the same Church, within one and the same Village, so that the Advowson and Church are severed in right and possession, there one Patron may have a *Quare Impedit de medietate Ecclesie*, Coke 10. part. 135. B. *Smiths case*; for there their Titles are entire.

21 Hen. 6. 4. pl. 8. in fine, One person says that he was Parson but of the Moiety of the Church, and good, 7 Edw. 3. 246. pl. 24. *Quare Impedit* of the Moiety of the Church. Q.

Parsonage. It lies of a Parsonage, and the Writ shall be *ad Ecclesiam*, because *Ecclesia* is intended of a Parsonage, Nat. br. 32. H. viz. the possession of the Church, Glebe, and Tithes.

Prebend. It lies of a Prebendary, per *Westm. 2. cap. 5.*
The Count, No. Lib. Intr. 507. B.

The Writ shall be *ad Prebendam*, Nat. br. 32. H. 40 Edw. 3. 17. pl. 7. but it ought to shew the name of it, 40 Edw. 3. 17. to make it more certain, for else the word is too general.

It

It lies of the Subdeaconry of York, *Nat. br.* Subdeaconry.
34. G. because presentative of right, as it seems.

The Writ shall be *quod permittat eum presentare*, and yet the King gives it by his Letters ters Patents, *Nat. br.* 34. G. but it seems such Writs were but of *puisne temps*.

It lies of a Vicarage, per 2. *Westm. cap. 5. viz.* a Vicarage. Vicarage to be endowed.

The Writ shall be *ad Vicariam*, *Nat. br.* 32. H. which the Law well takes notice of.

The Count in a Quare Impedit.

He that brings a *Quare Impedit* in his count ought to alledge a Presentment in himself, or in his Ancestors, or in him by whom he claims, *Nat. br.* 33. H.

1. Unless a man erect a new Church, for then the Count shall be special, *Nat. br.* 33. H. 17 *Edw.* 3. 12. and shall set it forth, to make it appear he cannot alledge a Presentment.

2. If he recover in a Writ of right, then he may alledge the presentation in him against whom he recovered, *Nat. br.* 33. F. Q.

Or he may have this Writ without alleadging any presentation, for he may count upon the Record, *Nat. br.* 36. A. whereby he recovered, and that makes it appear the Presentation belongs to him.

Or if he recover in a *Quare Impedit*, the same Law, 42 *Edw.* 3. 8. pl. 5.

3. He may alleadage seisin in the Procurator, *Nat. br.* 33. F. 17 *Edw.* 3. 60, & 75. which is, as it were his own seisin.

He

He that alleadges Presentation in himself, ought to shew that the Presentee was instituted, although that it was against a Common person, for without Institution he had no fruit of his presentation, and so it is as nul. But against the King he ought to shew that he was Inducted, *Com. 528. Bickleys case, Coke 6. part. 49. Boswells case;* for a man must make a full and compleat Title against the King.

And such presentment ought to be within memory, *17 Edw. 3. 10. Quere* of the Law at this day.

Presentation
in his
own name.

Devisee for life alleadges the presentation in himself, and good, *Coke 5. part. 37. 8 Hen. 5. 10.* in respect of his Free-hold.

Of the presentation of Tenant for life, *vid. Coke 5. part. 97, 98.*

For years, *7 Edw. 4. 20. 22 Edw. 4. 9. B.*

In Dower.

By the Courtisie.

At Will, *5 Hen. 5. 3. pl. 6.*

These are the presentments of him that hath Fee. *Q.*

The King grants the Advowson to *A*, the Church being void, and presents, *13 Eliz. Dyer 330. pl. 36.* by Lapse, *21 Eliz. Dyer 364. pl. 28.* and good, for his grant hinders not, for he presents by Lapse upon another title.

But the issue in Tail ought to alleadge presentment in the Donor, because he derives his title from him, or he may alleadge it in himself, *Com. Manxels case, fol. 4. B.*

If it be alleadged in the Donor or Donee, Lessor or Lessee, it is not double, because the
Pre-

Presentment of the Lessor or Donor is only transferable, and not of the Lessee or Donee, *Coke 5. part. 99. A. Northumberland's case.*

Presentation in him, by which he claims.

For the Lessee ought regularly to allcadge it in the Lessor, *Coke 5. part. 98. A.*

Yet, if he alleadge Presentation by himself it is good, *8 Hen. 25. 4.*

But in the Judgment of the Law this is the Presentation of the Lessor, *Coke 5. part. 89.* and so taken notice of what ever he alleadge.

A Purchaser may alleadge it in him whose Estate he hath, because he derives from him, *13 Hen. 8. 12. pl. 2. 2 Edw. 3. pl. 29. 1. 6 Edw. 3. 204. pl. 7. Nat. br. 33. H.*

He that brings a *Quare Impedit* ought to shew, specially how the Church becomes void, *5 Edw. 4. 72. B.* for the Incumbent may be removed out of possession by Spoliation, Disseisin, or be outed otherways, yet then the Church is full in the eye of the Law.

The Proceß in a Quare Impedit, 1. Before appearance; 2. After.

Vide Lib. Intra. 52. B. Sect. 1, 2, 3, 4, 5, 6, 7, 8.
At the Common Law it was but a Distress infinite, *11 Hen. 6. 3. Martin.*

But *per le Stat. Marlebridge, cap. 12.* if he appears not at the Grand Distress, a Writ shall issue to the Bishop, *24 Edw. 3. 37. 5 Edw. 4. 115. 7 Eliz. Dyer 241. pl. 48. 7 Eliz. Dyer 241. pl. 1. Nat. br. 38. N.*

The same Law in a *Scire facias* by the King, upon a Judgment in a *Quare Impedit*, *14 Edw. 3. Qu. Imped. 5.* So

Quare impedit.

So if the Sheriff returns a *Nibil* upon the Grand distress, 12 Hen. 4. 4. *Hankeford*, 21 Hen. 6. 56. pl. 13. 11 Hen. 6. 3. pl. 8. because the Process is determined, *vide* 27 Hen. 6. 5. pl. 32. for the Sheriff hath done as much as he can in the executing of it.

And this is for the mischief of the Lapse, 24 Edw. 3. 37. *viz.* in all the foregoing cases where in there is no Laches in the Patron, nor any delay caused by him.

But if a *Nibil* be returned upon the Summons, Attachment, and Distress, *quare* 11 Hen. 6. 3. if a Writ to the Bishop 4. shall issue; yet the better opinion there is, that a Writ shall issue to the Bishop. And this seems to be so upon the same ground, *viz.* for the mischief of a Lapse.

And if a *Quare Impedit* be against two, and one appears at the Grand distress, the other makes default, a Writ shall issue to the Bishop *pro querente* against him that made default, *Nat. br.* 39. B. 14 Hen. 7. 19. but not against the other, because he appears according to Law.

Quare Impedit against the Bishop and B, B makes default at the Grand distress, the Bishop pleads that he claims nothing but as Ordinary, the Plaintiff shall have a Writ to the Bishop against B, after the Count made against the Defendants upon the Bishops appearing at the Grand distress, 10 Hen. 6. 4. Writ to the Bishop, 3.

In a *Quare Impedit* the Defendant appears, and after appearance makes default, the Plaintiff shall have a Writ to the Bishop, 2 Hen. 4. 1. pl. 3. *Nat. br.* 38. S. because it shall be intended he will not longer defend himself.

At

At the Grand distress the Defendant pleads to issue, and after makes default, a Writ shall issue to the Bishop without more ado, for the Grand distress was issuable, 16 *Edw.* 3. Writ to the Bishop 17. 12 *Edw.* 2. *Quare Impedit* 168.

Upon a default at the Grand distress the Plaintiff shall have Judgment, *Lib. Intra.* 507. *A. Sec.* 1, 2, 3. Judgment, as upon a *Nihil dicit*.

The Plaintiff is Non-suited, the Defendant shall have a Writ to the Bishop without making Title, as it seems; but the surest way is to make Title, 33 *Hen.* 6. 1. *pl.* 2. for that puts all without question for the future.

T brought an Affize of Darrein Presentment against P, and the Affize was taken by his, *viz.* P's default, and when the Affize was sworn, T withdrew himself; P shall have a Writ to the Bishop, although he was not in Court, 9 *Edw.* 3. *Darrein Presentment* 17. for some Judgment must be, and it cannot be for T. And although P made default, yet the enquest might have found for him upon something of their own knowledge.

Barr in a Quare Impedit, 1. By the Ordinary.
2. *By others.*

The Church was Litigious, and he Collated after the six months, 34 *Hen.* 6. 41. *pl.* 10. 5 *Hen.* 7. 19. 34 *Hen.* 6. 38. 2 *Hen.* 6. 44. 18 *Edw.* 3. Plea by the
Ordinary
the Church
Litigious.

It shall be accounted Litigious, where there are two Presentations and two Commissions, and one
Com.

What shall
be account-
ed Litigi-
ous.

Commission is found for one, and another for another, 22 H. 6. 44. *A. Newton & Paston*; for no man here can judge whose the right is, for they are as it were *in equali jure*.

But if the Title of one be found, and another present, and request is made to admit the Clerk, for which it was found, it is not Litigious, 22 Hen. 6. 28. Br. of *Quare Impedit* 80. for there is a Title found for one, and none for the other.

If two Joyntenants, or Tenants in common present severally, it is not Litigious, *Doct. & Stud.* 116. *A.* for their right is one and the same.

If two present severally, and neither the one nor the other pray a Commission to enquire the right, the Church is Litigious, *Lib. Intra* 511, & 512. 35 Hen. 6. 18. pl. 27. 8 Edw. 3. 289. pl. 49. because the right of neither is put in issue.

Claiming nothing but as Ordinary, Judgment, *fi, &c.* without special disturbance; this is good, 5 Hen. 7. 19. 22 Hen. 6. 15. 33 Hen. 6. 12. 32. viz. a good plea in barr for the Ordinary.

But the Plaintiff upon this may pray Judgment, and have it with *Cessat Executio*, until, &c. *Crook* 17 Hen. 7. 43. pl. 9. the right determined.

Pleas in disability of the person presented, are as followeth:

Refusing
the Clerk
for default
in the pre-
sentee
which is.

1. An Alien, 7 Rich. 2. and this although he be made Denizen after, *ibidem*; viz. after he presented, for he was not idoneous at the time of the refusal.

2. Bastard,

2. Bastard, *Coke* 5. part. 58. A. 11 Hen. 4. 8. A. 11 Hen. 7. 12. 11 Hen. 4. 37. but if he be admitted it is good. 29 *Edw.* 3. 44. pl. 3. Q. whether, and by what Law it is a good plea, because he is *nullius filius*.

3. Blind, *Coke* 11. part. 29. B. For he cannot see to study, nor can watch over his Flock. Q. *tamen*. For blind men have received Orders.

4. Heretick. *Coke* 11. part. 29. B. For he is not fit to instruct or guide his flock.

5. Homicide, 38 *Edw.* 3. 2. For he is not fit to be a Minister of the Gospel of peace.

6. Infant, *Coke* 5. part. 58. A. 6 *Edw.* 3. 184. pl. 6. *Herle*. For he is not fit to guide himself or his own estate, much less others souls.

7. Jew: *Coke* 11. part. 29. B. *qua* a Jew; but if a convert, it seems he may.

8. Illiterate, 12 *Eliz.* *Dyer*. 293. pl. 3. *Coke* 5. part. 58. A. *Specotts* case. 40 *Edw.* 3. 25. pl. 31. For he is unfit to teach, and had more need to be taught.

9. Perjured, For he will make little conscience of Religion:

10. Irreligious. 5 *Hen.* 7. 6. Q. how.

11. Miscreant, *Coke* 5. part. 58. A. *Specotts* case, *viz.* that believes not rightly the Articles of the Faith: For how will he maintain and instruct others in it?

12. Not able upon examination, 39 *Edw.* 3. 1. pl. 5. *viz.* of the Ordinary in the principles of Religion, and other fit qualifications.

13. Premunire, 38 *Edw.* 3. 3. pl. 9. In regard of the heinousness of the offence and punishment.

X

14. Him-

Quare Impedit.

14. Himself patron, 31 *Hen. 6.* 621. For he ought not to present himself.

15. Saracen, *Coke 11. part 29. B.* or Turk, or Infidel, not acknowledging God and Christ.

16. Schismatick, *Coke 5. part. 58. A. Specotts case.* For he will make disturbance in the Church.

17. Simonist. *Lib. intra. 532. A. Q.* By what Law.

18. Villain, 14 *Hen. 7.* 28. *B.* For he is not *fui juris.*

19. Utlaw, *Coke 5. part. 48. A. Specotts case.* For he is fit for no society, and unfit to teach obedience to others, that hath none himself.

These are good Causes of refusal, viz. which are above specified.

Note.

Where one having a Parsonage in *Wales*, and could not speak *Welsh*, and therefore excepted unto as insufficient, it was demurred to *Trin. 27 Eliz.* *Albany* versus *Episcopum S. Asaf.* *Q. De ley.* as not a sufficient cause.

These are not good causes of refusal.

That he hath another Benefice with Cure, 14 *Hen. 7.* 28. *B.* For he may be qualified to have two Benefices by the Stat.

Hunter of Taverns and a player at unlawful Games, *Coke 5. part. 57. Specotts case. 9 Eliz. Dyer. 254.* For this makes him not unfit to watch, though it make him scandalous, for which he ought to be punished.

Criminosus,

Quare Impedit.

323

Criminosus, 34 Hen. 6. 39. A. For that is a word of a very large extent, and uncertain.

These are good causes of refusal in the Presenter.

Attainted, 15 Hen. 5. 17. B. Keble. viz. of Felony or Treason.

Excommunicated per 40 days 115 Hen. 7. 7. B. Keble. and so stands excommunicated in contempt of the Church. This Law is now altered by the taking away the Ecclesiastical jurisdiction in that point, and now is again revived.

Presenter
which is.

Infant not of the Age of 14 years, *Perkins*, 4. A. For he shall not be judged of sufficient discretion to present a fit person. *Quatenus*.

Joynt Tenant or Tenant in common not agreeing, *Nat. br.* 34. V. concerning their presenting; for that is litigious.

The same Law is of one present alone, 14 Eliz. Dyer. 340. pl. 54. except it be by consent.

A Master of a Colledge presented by the Colledge, 14 Hen. 8. 23. For that is like as when the Patron presents himself.

Utlawed, 15 Hen. 7. 17. B. Keble. For he can have no Title.

A Corporation ought to present in writing; 14 Hen. 8. 2. and not by parol, for they cannot all speak at once, as they may by writing. Presentation.

A Body natural may present by word, 14 Hen. 4. 22.

The King may present by word, 19. Edw. 3. *Quare impedit*. 60. For he is but one person numerical

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tical

rical, though he hath a political capacity, and speaks in the plural number.

Abate-
ment.

It is no Bar to say that the other Writ was abated, if it were for form or false Latine, *Coke 7. part 27. B. Portmans case.* For that is not the fault of the Plaintiff, but of the Clark.

But that it was abated, because the Plaintiff was made Knight, the Writ depending, this is a good Bar, *Coke 7. part. 27. B. Portmans case.* For it was his own fault.

Appen-
dant.

The Plaintiff counts of the presentment to the Advowson in Gros, and a Grant of it to him; the Defendant pleads it was appendant, he cannot traverse that it was not in gros, because by intendment they are several Advowsons, *Crooke. 19 Hen. 7. 51. pl. 1.* For one and the same Advowson cannot be in gros, and also appendant.

Arbitre-
ment.

An Arbitrement is a good Bar, *Lib. intra. 498. C. f. 1.*

Confirma-
tion.

A Confirmation or ratification by the King to the Incumbent is a good Bar against the King, *7 Hen. 4. 13. 14 Hen. 4. 25. 837. Lib. intra. 531. sect. 22.* by way of estopple.

But this ought to be after Induction, *11 Hen. 4. 9.* For before he shall not be said to be a perfect Incumbent, as to the King.

If the King be deceived, he may repeal this Confirmation, *31 Edw. 3. Quare impedit, 161.* This by his prerogative; for the King ought to be truly informed.

But then the repeal ought to be before Induction or Installation, *25 Edw. 3. 47.* for after it is too late.

If the King recover and confirm the Incumbent, this is no Bar to the next avoidance, because his Judgment cannot be executed, *Nat. br.* 34. *F.* 10. *Edw.* 3. 389. *pl.* 32. 18 *Edw.* 3. 57. *pl.* 87.

But if he Lease the Advowsons afterwards, *quare* who shall have them?

Discontinuance.

Where one brought a *Quare impedit*, and discontinued his Action, adjudged a good Bar, although that the Writ was purchased afterwards within the 6 Months, *Coke* 7. *part.* 27. *B. Portmans* case. For it shall be intended he hath no right.

A Fine levied by the Ancestor of the Plaintiff of the Advowson, is a good Bar, *Lib. intra.* 532. *C. sect.* 3.

Warranty and Assets descended to the heir, is a good Bar against the Issue in Tail, 43. *Edw.* 3. 24. *pl.* 31.

That he did not disturb, is a good bar, *Lib. intra.* 503. *C. sect.* 2. 22 *Edw.* 3. 17. *pl.* 71. For a good Issue may be taken upon it.

No Disturber.

This may be pleaded to the grand Distress, 22 *Edw.* 3. 17. *pl.* 71. as well as if he had appeared upon the first summons.

But 21 *Hen.* 6. 45. *A.* 2 *Edw.* 3. 32. *pl.* 7. It is held that it is no Bar, because no Title is made. 14. *Edw.* 3. Judgment, 158. and before Title made there needs no plea; yet *Q.* For he may, as it seems, admit a Title.

But if it be a good plea before Issue, yet after Issue joyned it is not, because it is a delay, and so a disturbance in it self in the eye of the Law, 3 *Edw.*

Quare Impedit.

3 *Edw.* 3. 50. *pl.* 6. 4. *Edw.* 3. 97. *pl.* 31. 17. *Edw.* 3. 71.

But 18. *Edw.* 3. 149. *pl.* 15. & *fol.* 359. B. *è contra*, after title made, this is no plea, 5 *Hen.* 4. 20. Br. *Quare impedit*, 62. Q.

Against the King it is no Bar, because the party there ought to make a title, 7 *Hen.* 4. 32. *pl.* 18.

Non-suit.

Non-suit after appearance in another *Quare impedit* before for the same advowson, is a good Bar: although the last be purchased within 6 Months, *Coke.* 7. *part.* 27. B. *Portmans* case. 22 *Hen.* 6. 25. 27. For that argues he had no right, and that his Suit was only vexatious.

And so if the former Writ were brought by the Plaintiff and another, and the Plaintiff is non-suit, 5 E. 157. *pl.* 10. For thereby he desists in his Claim.

No such Church.

No such Church in the same County, is no Bar, 8 *Hen.* 6. 37. *pl.* 69. 9 *Hen.* 6. 17. Q.

Pardon.

But 45 *Edw.* 3. 36. *pl.* 2. *è contra.* Q.

Pardon of the King for alienation is no Bar, if the Church be void before the pardon, 27 *Edw.* 3. 38. For then the pardon works not upon the precedent right.

Plenary.

Plenary a good Bar, though the Patron had no notice of the Avoidance; for this is to stop the Collation of the Ordinary, but not the Presentation of the Patron, *Pasch.* 39 *Eliz.* Com. Ban. *Scriven* against the Bishop of *Lincolne*.

Plenary of a Frank Chappel is no Bar; for if he shall be put to his *Quare impedit*, then it shall be presentative afterwards, 22 *Hen.* 6. 25. B. Which is mischievous to the Patron, in making

king

king it subject to the visitation of the Ordinary.

The Church is said to be full against a common person by Institution, 22 Hen. 6. 27. A. 14 Hen. 8 2. *Brudenel.* 12 Hen. 4. 38. For by that the Clerk is approved, and Induction is but as it were giving of possession.

And against the King by Induction, 22 Hen. 6. 27. B. which makes him a compleat Incumbent to all intents and purposes.

He that pleads plenarty, ought to say that it is full of his own presentment, and not of another; for if the Defendant be disturbed, he shall not be punished, and if he hath title, he ought to shew it, 3 Hen. 6. 20. Br. plenarty 6. 16 Edw. 4. 11. 8 Edw. 3. *Statham.*

He shall plead that he was in per 6 Months of his Presentment before the purchase of the Advowson by the Plaintiff.

But if it be of a presentment of the predecessor of the Plaintiff, yet it is good, 8 Edw. 3. presentment 5.

The 6 Months shall be accounted according to the Kalendar, *Coke* 6. part 61, 62. *Catesbyes* case; and not after 28 days to the Month; for that is the ancient account used in Law.

Who shall plead Plenarty, and who not.

Incumbent pleads Plenarty of himself, *ex presentatione* B. viz. the Plaintiff. *Coke* 6 part 48. 2 Hen. 6. 14. pl. 22. No. Lib. intra. 265. A. *absque hoc* that it was void; for the Incumbent is not able to plead it otherways, per 25 Edw. 3. cap. 7.

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But

Quare Impedit.

But 16 *Edw.* 4. 11. *pl.* 6. *Com.* 501. *A. Manwood* è *contra.* Ergo *Q.*

Because he that pleads this, ought to say, that the Incumbent is in of his own presentation, 2 *Rich.* 2. Incumbent 4. *Belknap.* 46 *Edw.* 3. 19. 18 *Edw.* 3. *Quare Impedit* 48. and not of others.

But *per* 4 *Edm.* 4. 13. The Incumbent pleads that the Plaintiff, or his predecessor presented him. *Q.* For it seems to be uncertain.

Parson imparsonnee cannot plead plenarty, because that he cannot say, that he is in *per* six Months of his own presentment, 38 *Hen.* 6. 20. *B.* 33 *Hen.* 6. 12. *pl.* 27. *Com.* 501. *A. Manwood.* 39 *Hen.* 6. 20. 46. *Affize.* *pl.* 4.

A Stranger, or he that claims nothing in the Patronage, cannot plead Plenarty, 7 *Hen.* 4. 34. *per* *Fitz James.* For it lies not in his mouth to say whether the Church be full or not.

Against whom Plenarty is no Plea.

Against the Lord that enters for Mortmain, it is no Plea; because the Lord hath liberty by the Law to enter at any time within the year, 21 *Edw.* 3. 27. *pl.* 25. 29 *Edw.* 3. 10. *pl.* 31. *Thorpe.* 47 *Edw.* 3. 11. *pl.* 8.

But after the year it is a good plea, 25 *Edw.* 3. 34. 26 *Edw.* 3. *Quare Impedit.* 163. For then he is in the condition of another Patron.

Quere if it be good against the Lord by Elcheat, 13 *Hen.* 8. 14. *Brudenel.* It seems
if

it is, for he shall be in no better condition then, than the Patron that died without Heir.

It is no plea against the King, 35 Hen. 6. 26. A. 1 Edw. 3. 17. pl. 9. 8 Edw. 3. 304. pl. 55. 43 Edw. 3. 14. pl. 8. For it is not a Plea in chief to determine the right, but only delatory, and the King shall not be delayed.

But against the Queen, Mother or Consort, it seems to be good, 18 Edw. 3. 13. pl. 9. 44 Edw. 3. Br. Plenarty 4. For she is but a subject, and shall be in no better condition in the eye of the Law.

A good Bar to say, that the Plaintiff presented his Clerk, and that he was inducted before the Writ purchased, 12 Hen. 4. 11. pl. 21. vide Crooke. 12 Hen. 7. 20. pl. 6. For then he could have no cause of Action.

A Recovery in another *Quare Impedit*, no Bar against the King, for he may make another Title, Nat. br. 35. P. than was made before, and a better it may be.

A Recovery by by the Plaintiff against another in a *Quare Impedit* for the same Advowson, no Bar; for there might be two disturbers.

Recovery by a Stranger in another *Quare Impedit*, no Bar, Crooke. 18 Hen. 7. 49. pl. 4. For nothing concerns the present Plaintiff.

That the Plaintiff is a Recusant Convict, a good Bar; for the Presentment is given to the University, per 3 Jac. And therefore the Plaintiff can have no cause of Action.

Release of Actions Personals a good Bar, Release. 22 Hen. 6. 25, vel 27. Littleton. fol. 116. A.

Quare Impedit.

30 Hen. 6. Bar. 59. For this is a mixt Action, and so it is personal in part.

So of Actions real, *Litteton* 116. A. 9 Hen. 6. 57. *Martin*. For being next, it is also real as well as personal.

If a Presentment be alledged in the Ancestry of the Plaintiff, it is a good Bar to plead a Release and Quit claim of the Ancestry, *pro fine* 8 Edw. 2. *Quare Impedit* 166. For thereby the Plaintiffs cause of Action is extinct.

If there be more Plaintiffs in a *Quare Impedit* than one, the Release of one is no Bar, but for him only that released, *Coke* 5. part 97. B. Nor. *thumberlands* case. 30 Hen. 6. Bar. 59. *Fortescue*. For their Titles may be distinct and several.

Judgment in a Quare Impedit.

1. *When he shall have Judgment.* 2. *Of what things he shall have Judgment.*

Upon default.

Upon default after appearance, the Plaintiff shall have Judgment and Damages, 2 Hen. 4. 1. pl. 3. *Nas. br.* 38. S. For this is, as it were, the confession of the Plaintiffs Title.

But upon default after a continuance, Distress shall issue out only, 6 Rich. 2. viz. before appearance make him to appear.

Upon Default at the grand Distress the Plaintiff shall have Judgment, *Lib. intra.* 507. A. sect. 1, 2, 3. For that is the last process to bring in the Defendant; and the Plaintiff can proceed no further upon mean process.

In

In a *Quare Impedit* against two, and one makes default after appearance, the Plaintiff shall have Judgment against him that makes default, *Nat. br. 39. B.* But not against the other; for anothers default shall not prejudice him.

If in a *Quare Impedit* against three, one makes default after appearance, and it is found against the Plaintiff for the others that appeared, who make a title, and it seems they shall have a Writ to the Bishop, *31 Hen. 6. 15. pl. 5. Q.*

One Defendant makes Title by himself, and others make default, the Judgment shall be to have a Writ to the Bishop for him that makes Title; but this is not before the Plaintiff have counted, *Nat. br. 38. f. 10 Hen. 6. 4. pl. 13.* For before that the cause of Action doth not appear.

Upon the Non-suit of the Plaintiff, the Defendant shall have a Writ to the Bishop, but not before Title made, *Nat. br. 38. K. 2 Hen. 5. 6. pl. 28. 19 Edw. 4. 9. pl. 10. 6 Edw. 3. 23. Collusion 5. 14 Hen. 4. 11.* That it may appear he hath a colourable right at the least.

Unless the Non-suit be after a Bar pleaded, *33 Hen. 6. 1. pl. 2. & fol. 55. pl. 48.* against the Defendants Title.

Three sue a *Quare Impedit*, and two are non-suited, and one of the Plaintiffs was also one of the Defendants, therefore he cannot make Title, *ideo quare*, if they shall not have a Writ to the Bishop without Title made, *11 Hen. 6. 8. pl. 13. Q.*

A. sued divers Writs of *Quare Impedit* against B, of the same Church, and is non suited in all except one, the Defendant shall not have a Writ

to the Bishop until that be determined, *Nat. br.* 38. R. For it may be the Plaintiff may clear his Title by that.

The Defendant makes Title to himself and another, the Plaintiff is non-suited, the Defendant shall have a Writ to the Bishop only, 13 *Edw.* 3. *br. Episc.* 25. For his Title is a Bar to the Plaintiff which is not opposed.

The Sheriff returns a *tardè*, &c. the Plaintiff makes default, he shall be non-suited; *Q.* but the Defendant shall not have a Writ to the Bishop, because the Writ was not served, 2 *Hen.* 5. 3. *pl.* 14. *Nat. br.* 38. *O.* 2 *Hen.* 5. 6. nor the other Non-suited, as it seems, because the Writ was not duly executed.

If an Infant be non-suited, the Defendant shall have a Writ to the Bishop, 2 *Mariae Dyer.* 104. *pl.* 13. to avoid a lapse, and that the Church may speedily be provided for.

A. brought a *Quare Impedit* against *B.*, *C.* and *D.*, and is non-suited, *B.* dies, *C.* and *D.* shall not have execution alone, 11 *Edw.* 3. *br. Episcopo* 55. because the Action was joyntly brought against all.

If one of the Co-parceners who bring a *Quare Impedit*, be non-suited, yet the other may sue, and the Defendant shall not have a Writ to the Bishop upon this Non-suit, 38 *Edw.* 3. 35. *br. Episc.* 12. because they have several Inheritances, and the default of one shall not bind another.

Disconti-
nuance.

The Plaintiff discontinued his Suit, the Defendant shall have Judgment to have a Writ to the Bishop, *Coke* 7. *part.* 27. *B.* For his discontinuance concludes he had no cause of Action.

A. brought

Quare Impedit.

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A. brought a *Quare Impedit* against B, and sued a *Ne admittas*, and then they compounded to present by turn, there shall be a special Writ out of the Chancery to the Bishop, to admit the Clerk that ought first to be admitted. For a special Cause may have a special Writ, and varying from the usual form.

Composition.

In a *Quare Impedit* the Defendant disclaims in the Advowson, the Plaintiff shall have Judgment, and a Writ to the Bishop, 6 *Edw.* 3. 7. Error 78. For by the Disclaimer he acknowledgeth he hath no Title.

Disclaimer

Where a Writ abates for form or false Latine, there shall not be Judgment for the Defendant to have a Writ to the Bishop, *Nat. br.* 38. *H.* 14 *Hen.* 4. 11. 13 *Hen.* 4. 7. For the Title is not determined, but only the Plaintiff is delayed.

Abatement.

The Defendant makes default, the Incumbent abates the Writ by plea, the Defendant shall not have a Writ to the Bishop, because he made default, *Nat. br.* 38. *H.* and so is not *rectus in Curia*.

If the Plaintiff being a Prebend, be made a Bishop in *Dublin*, this shall abate the Writ, *per Wilby*, 24 *Edw.* 3. 26. *pl.* 21. Q. how it shall be taken notice of here.

If the Writ abates for Misnomer, or other non-sufficiency in it, the Defendant shall not have a Writ to the Bishop, *Nat. br.* 38. *M.* 31 *Hen.* 6. 15. For the right is not determined.

If a *Quare Impedit* is brought in *Com. M.* and the Count is of a Church in *Com. O.* the Writ shall abate, but the Defendant shall not have

have a Writ to the Bishop, 21 *Rich.* 2. 29. for the former reason.

Verdict.

It was found by verdict that the Metropolitan collated where the Ordinary ought to have done it, when the year is passed, the Plaintiff shall have a Writ to the Bishop, *Nat. br.* 38. P. Q.

In a *Quare Impedit* between A and B, if the Title appear for the King, Judgment shall be given for him, *Nat. br.* 38. E. notwithstanding he is not party to the Suit, that is, by his Prerogative. All the Judges are the Kings Counsel, and ought to give Judgment for him, where his Right appears, although he sue not for it.

The Writ to the Bishop, to whom it shall be directed.

If a man recover against another as well as the Bishop, he ought to have a Writ to the Bishop of the Diocese, *Nat. br.* 38. C. For a Bishop is but a Minister to admit the party.

If the Writ be against the Bishop, although he claim but as Ordinary, yet the Plaintiff shall have a Writ to the Bishop, 8 *Hen.* 4. 22. *Lib. intra.* 521. For he claims no right, nor doth any thing by executing the Writ in prejudice of himself.

If a man recover against the Bishop, he shall have a Writ to the Bishop or Metropolitan, *Nat. br.* 38. B. and Q. 18 *Eliz.* *Dyer.* 353. pl. 30. 38 *Edw.* 3. 12. B. at the election of the party, as it seems.

If it be once to the Metropolitan, he shall never have it to an inferior Bishop afterwards, *ibidem*,
For

For it is not usual in Law to descend from a higher authority to a lower.

Or to the Vicar general, if the Bishop be out of the Realm, *Nat. br. 38. Q.* For the Vicar general is an Officer under the Archbishop.

Or to the Gardein of the Spiritualities of the Arch-bishop, *7 Hen. 4. 36.* for the same reason, as it seems.

If there be no Bishop of the Diocess, then to the Metropolitan; if no Metropolitan, then to the Gardein of the Spiritualities, but if before the execution the Archbishop be made, *quere* if the power of the Gardein be not determined; *18 Eliz. Dyer. 350. pl. 19.* It seems it is.

If it be against the Arch-bishop of *York*, the Writ shall be to the Metropolitan, *15 Eliz. Dyer. 328. pl. 7. viz. of all England, viz. the Arch-bishop of Canterbury.*

The King recovers a Prebendary or Sub-Deaconry, or other Dignity against the Bishop, and gives it by Letters Patents to *A*, yet *A* shall have a Writ to the Bishop to be admitted to the Kings right. And if he die before induction, and the King grants this to *B*, he shall have a Writ out of the Chancery, and a Writ to the Bishop, *Nat. br. 38. D.* It seems the Writ shall be special.

The King recovers a Prebendary, and hath a Writ to two Bishops, because the Prebendary was in one Diocess, and the Church to which the Prebendary belongs, is in another Diocess, *24 Edw. 3. 37. pl. 56.* and so it concerns both the Bishops.

¶

Quare Impedit.

If a man recover a Chappel donative, he shall have a Writ to the Sheriff, *Nat. br.* 48. 8. For it is in the nature of a Lay Fee, and lies not within the jurisdiction of the Ordinary.

Process in a Writ to the Bishop.

The Process is *alias*, *plures*, Attachment, ora Writ *de quare non admisit*, *Nat. br.* 47. C.

Of what things a man shall have Judgment.

1. A Writ to the Bishop, and no damages.

Coke 6. part. 51. A. Boswells Case. At the Common Law were no damages in a *Quare Impedit*. But by the Statute damages are given, as the Statute following mentions.

Statute *Westm. 2. cap. 5.* is, *Si tempus semestre transierit per impedimentum alicujus, ita quod Episcopus ad Ecclesiam conferat, & verus Patronus ea vice presentationem amittat, adjudicentur dampna ad valorem medietatis Ecclesie pro duobus annis, & si non transierit sed distracionetur presentio infra tempus predictum tunc adjudicentur dampna ad valorem medietatis Ecclesie per unum annum.*

The King is not within this Statute to have damages, for at the Common Law the King was not in danger to lose his presentation *per plenary*, *Coke 6. part. 51. A. Boswells case.* 3 *Hen. 6.* Damnges 17. 34 *Hen. 6.* 51. 14 *Edw. 3.* *Quare Impedit* 54. 33 *Edw. 3.* *Br.* 916. *vide* 7 *Edw. 6. Dyer.* 236. *pl.* 28. And the Statute was made only for that intent.

If

If it is found for the Plaintiff, and that the Church is full, the Plaintiff may have a Writ to the Bishop, but then he shall recover no damages, 24 *Edw.3.35. pl. 42. & 75. pl. 97.* for he could not be damnified by reason of the plurality.

It is found that the Ordinary presented before his time, the Plaintiff releases damages, and had a Writ to the Bishop, 11 *Hen. 4. 79. pl. 22.* for the Ordinary had no right to present.

The Ordinary claims nothing but as Ordinary, the Plaintiff had Judgment against him as Ordinary, and the Disturber and his Clerk dies, the Plaintiff shall have execution, but it seems no damages, *Crooke 17 Hen. 7. 43. pl. 9. Quare tamen*, for it seems not reasonable that he should be without remedy.

The Defendant comes the first day, and confesseth the Action, there shall be a Writ to the Bishop, but no damages, 4 *Edw. 2. Damages 9. 5 Edw. 3. 133. pl. 13. 5 Edw. 3. 139. pl. 44.* in regard of the smallness of them, for *de minimis non curat Lex.*

In a *Quare Impedit* against the Incumbent, the King revokes his presentation, the Plaintiff shall have no damages against the Incumbent, 44 *Edw. 3. 35. B.* because he came in upon the Kings presentation, and is now ousted by him.

The Plaintiff shall not have damages against the Incumbent, if he pleads not, or is not proved a Disturber, 45 *Edw. 3. Damages 39.* but shall recover only the presentation, 5 *Edw. 3. 13.* but by his pleading he is a Disturber, and damages are recoverable for the disturbance.

Single
dammages.

A Writ to the Bishop, and single dammages,
17 *Edw.* 3. 5. *pl.* 12. 24 *Edw.* 3. 37. *pl.* 54.
26 *Edw.* 3. 75. *pl.* 25:

A sues *B* and *C*, and it is found that *B* only had right, *B* shall have dammages against *A* and *C*, 45 *Edw.* 3. 14. *pl.* 12. & *br. Episcopo*, for they are both Disturbers as to *B*.

In a *Quare Impedit* against the Ordinary and *B*, the Ordinary confesses the Action, and it is found against *B*, and that the Church is full of the presentment of *B*, the Plaintiff shall have a Writ to the Bishop, and single dammages, or double dammages, and no Writ to the Bishop at his election, 39 *Edw.* 3. 15. but shall not have both, 5 *Edw.* 3. 150. *pl.* 10. for this would be double satisfaction for one tort.

The Defendant confesses the Action, the Plaintiff shews that the six Months are past, and had a Writ to the Bishop and dammages, 21 *Edw.* 3. 55. *pl.* 8. 20 *Edw.* 3. *Collusion* 34. 6 *Edw.* 6. *Dyer* 76. *pl.* 35. by the Statute.

The Plaintiff and the Ordinary are at issue upon the ability of the Incumbent, the Ordinary admits him, the Plaintiff shall have a Writ to the Bishop, and single dammages; for the admittance proves him able, 40 *Edw.* 3. 25. *pl.* 21. and consequently the Ordinary a Disturber, and to pay dammages.

A Writ to the Bishop to admit the parties Clerk, and a Writ to the Sheriff to enquire of dammages, 19 *Edw.* 3. *Quare Impedit* 156. 24 *Edw.* 3. 37. *Lib. Intr.* 507. *C. Sec.* 6, 7, 8. sustained by the disturbance. It

It was found that the Metropolitan collated before his time, the Plaintiff shall have a Writ to the Bishop, but then he shall have but single damages, 11 Hen. 4. 80. Nat. br. 38. P. *vid. le Stat.*

The Bishop grants *proximam presentationem* to B, and dies, the Church voids, the Successor collates, B brings his *Quare Impedit* within six Months, two years pass, the Plaintiff had judgment, and upon his prayer had a Writ to remove the Incumbent, and single damages, and a Writ to the Bishop or Metropolitan at his election, 2 & 3 Mariae, Eliz. Dyer 194. pl. 33. to admit his Clerk.

Quare Impedit against the Ordinary who Collates, and pleads to the Plaintiff that the six months are passed, the Plaintiff recovers the presentation and single damages; for where the Ordinary claims as Ordinary where he cannot maintain the right, he cannot collate as Ordinary for the time past, 5 Edw. 3. 150. pl. 19. Coke 5. part. 58. B. 30 Edw. 3. 15. pl. 4.

The same Law is upon a recovery against another man, if the Plaintiff will at his peril have a Writ to the Bishop, 6 Edw. 6. Dyer 77. pl. 35. 11 Hen. 4. 79. pl. 22.

Quare Impedit against the Bishop of L. the Metropolitan, and against G his Clerk, they all three make default at the Grand distress, and a Writ of enquiry of the points in the Writ, and damages was awarded, and thereupon found that the Church was void two years, and that the Metropolitan collated G; and Judgment was that the Plaintiff shall have a Writ to the Bishop, and

Quare Impedit.

single dammages; but because the Church void so long, and the Defendants in *misericordia*, 7 Eliz. Dyer 241. pl. 48.

A Writ to the Bishop, and double dammages.

Quare Impedit against the Ordinary and B, the six Months pass, the Plaintiff shall have double dammages, although the Ordinary did not collate, because he had *jus conferendi*, and also a Writ to the Bishop, 43 Edw. 3. 10. pl. 33.

The Plaintiff recovers double dammages, because the six Months were passed; and also a Writ to the Bishop, and his Clerk instituted, because the Bishop did not collate; but this was not done by the party, 8 Edw. 3. 280. pl. 9. Q.

A man shall recover double dammages, although he recover all before the six Months pass, 13 Edw. 4. 3. Littleton. by the Stat. of W. 2.

Single dammages, and no Writ to the Bishop.

Before the return of the Writ to enquire of dammages, the six Months pass, the Bishop collates; yet but single dammages, 24 Edw. 3. 35. pl. 13. 27 Edw. 3. Dammages 106.

But the reason it seems is, because of the former Judgment, that he shall have a Writ to the Bishop; and this being of Record shall stop him from double dammages, for he is to have his Clerk thereby admitted.

22 Hen. 6. 28. Dammages, but no Writ to the Bishop. *Quare Impedit* against a Parson imparsoned, and found for the Defendant, he shall have

have dammages, but no Writ to the Bishop, *Nat. br.* 38. L. 26 *Hen. 6. bre. Episcopo* 6. for such Writ would be to no purpose.

Double dammages, and no Writ to the Bishop.

Quare Impedit against the Ordinary and B, the Ordinary confesseth the Action, and it is found against B, and that the Church is full of the presentment of B, the Plaintiff shall have double dammages, but no Writ to the Bishop; or shall have single dammages, and a Writ to the Bishop at his election, 39 *Edm. 3. 15.* but not both; for the double dammages are in recompence of his presentation.

The Ordinary intitles himself by Lapse, the Patron and Incumbent confess the Action, the Plaintiff shall have double dammages against the Patron and Incumbent, 34 *Flen. 6. 41.* 34 *Hen. 6. 39.* because the Church is full.

Quare Impedit against the Patron and Incumbent, they traverse the Title, the six Months pass, the Plaintiff, if he recovers, shall have double dammages against both, 46 *Edm. 3. 15. pl. 5.* *Vid. the Stat.*

Two Writs to the Bishop.

The Defendant in a *Quare Impedit* brought a Darrein presentment against the Plaintiff, the Plaintiff is nonsuited in the *Quare Impedit*, the Defendant recovers in the Darrein presentment, the Defendant shall have Judgment to have two Writs to the Bishop, but shall not have dam-
1 3 images

Quare Impedit.

images twice, *Nat.br.* 39.D. viz. upon the Plaintiffs nonsuit one, and upon his own recovery another, for that would be double amends.

In what Court, and what Judges have power to award a Writ to the Bishop.

Justices of *Nisi prius* have power, per *Westm.2. cap.30.* & 40.14 *Edw.3.cap.16.* 9 *Eliz. Dyer* 260. pl.21. 6 *Edw.6.76. pl.34.*

The Lords, it seems, of Mannors, Judges in *Wales*, have not power, 36 *Hen.6.B. Fortescue*, 35 *Hen.6.30. pl.35.* 3 *Edw.3.63. pl.35.* 8 *Edw.3.319. pl.15.* 24 *Edw.3.33. pl.26. Regist. orig. 31.A.* for the Bishops are not tied to take notice of their Writs.

Lord in ancient *Demefn* hath no power to award a Writ to the Bishop, 7 *Hen.6.35.* for this is an inferiour Court circumscribed within its own Jurisdiction.

The Five Ports cannot award a Writ to the Bishop, 21 *Hen.7.88. pl.7. Crooke*; for these are particular Franchises within themselves.

Ne Admittas.

What Person shall have it.

The Plaintiff in a *Quare Impedit*, or *Darrein Presentment*, shall have it, *Nat.br.35.F.*

So the Defendant shall have it, *Nat.br.37.H.*

In what Cases it lies.

When a *Quare Impedit* or *Darrein Presentment* is depending, and the Plaintiff or Defendant supposeth that the Bishop will admit the Clerk of the other, then a *Ne admittas* lies, *Nat.br.37.F. Regist.*

Regist. orig. 31. A. 21 Hen. 44. *Newton, Vet. Nat. br.* 24. B. to hinder the Bishop from admitting any Clerk till the right be determined.

If one of the Writs be not depending, then it lies not, *Nat. br.* 37. H. viz. a *Quare Impedit* or *Darrein Presentment*, for this Writ supposeth a Title in question, which must be by one of those Writs.

For if the right of Advowson is depending, it lies not, because the Presentation is not to be recovered in it, *Nat. br.* 48. Q. and so the admittance of a Clerk is not in question.

But note, that this lies before any Certificate made, that a *Quare Impedit* or *Darrein Presentment* is depending, *Nat. br.* 37. H. for depending of the Writs rests not upon the Certificate. Note.

Yet the party grieved by the *Ne admittas* shall have a Writ to the Chief Justice, to certifie if any Writ be depending; and if he certifie none, then a *Superfedeas* shall be awarded, *Nat. br.* 37. H. to supersede the *Ne admittas*.

Note, that this Writ does not hinder the Ordinary, but that he may present by Lapse, unless he be party, *Nat. br.* 48. L. *Vet. Nat. br.* 24, & 25. viz. party to the Suit, for else it concerns him not. Note.

Within what time this ought to be brought.

Within six Months, and not after by reason of Lapse.

Locum habet infra tempus semetre, & non postea, quia Diocesanus illam conferat per Lapsum temporis ad sex menses, quia Diocesanus illud specialiter est indultum, Regist. orig. 37. F.

Quare Impedit.

Yet for the King it always keeps place, *Regist. orig. 31. A. Nat. br. 37. F, & G. vide Br. for nullum tempus occurrit Regi*, the King is not tied to circumstances of time or place, &c.

The Writ.

The Writ shall be alone, although the Bishop be party, as where not; *Tamen olim fuit, ne conferatis alicui Ecclesiam de N. que vacat, Regist. orig. 31. A, B. Nat. 38. A.*

The Process.

Is Prohibition, Attachment, and Distress, *Nat. br. 24, & 25.*

*Quare non admittit.**Out of what Court this issueth.*

It issueth out of the *Com. Ban.* because it issueth out of the Rolls of the Court, *Regist. orig. 32. A. Vet. Nat. br. 25. B. 12 Edw. 3. Quare non admittit 6.*

For this is a Judicial Writ, *Vet. Nat. br. 25. B. Regist. orig. 32. A. 12 Edw. 3. Quare non admittit 6. & per Nat. br. 47. C.* grounded upon a Record of Court.

This may issue out of the Chancery in the Vacation also; for in the Vacation it cannot issue out of the Common Pleas.

If the King recover in *Com. Ban.* in *Quare Impedit*, he may have this Writ in *Ban. Regis, Nat. br. 47.*

br. 47. D. for this Writ is but to have the effect of his Suit, and he may seek for his right in any of his Courts.

What Person shall have it.

Every one that recovers, if the Bishop will not admit, his Clerk shall have it, *Nat. br. 47. C. Vet. Nat. br. 25. B.* or else his Suit would be but fruitless, if it were not compulsory.

Against whom it lies.

It shall be brought against the Bishop, although the Vicar general made the refusal, *Vet. Nat. br. 26. A. Nat. br. 47. F. 13 Edw. 36. Quare non admisit 4.* for the Law takes notice of him only as a more publick person concerned.

It was brought against the Gardein of the Spiritualties, upon refusal of the Bishop which is dead, *Vet. Nat. br. 26. A. Nat. br. 47. F.* and well, for he is now in the room of the Bishop.

But it was denied against the Archbishops Gardein of the Spiritualties, *vivente Archiepiscopo, ut videtur.*

And yet *quere per 17 Edw. 3. 27. pl. 9.* if the Metropolitan of Common right be not Gardein of the Spiritualties. It seems not since *Hen. 8.* came.

It was maintained against the Official of the Bishop, *Nat. br. 47. N.* who used, as it seems, to commit Clerks presented.

*Quare Impedit.**In what Cases this lies.*

When a man recovers his presentation, and the Bishop will not admit his Clerk, the party shall have this Writ, *Vet. Nat. br. 25. B. Nat. br. 47. C.*

And this is although the Bishop return cause, why he will not admit the Clerk, *9. Eliz. Dyer 260. pl. 21. Coke 6. part. 52. A. Boswells case*; for he must take notice of the Judgments given at the Law in such cases.

But if the Record be removed by a Writ of Error, it lies not till Judgment be affirmed, *Nat. br. 47. E.* for till then it doth not appear the Judgment was duly given, and this Writ doth suppose right Judgment given.

The Bishop refuses, and afterward admits him, yet the party it seems shall have this Writ, *Nat. br. 47. L. Q.* for it seems to little purpose, except it be to recover damages for not admitting at first.

The Writ.

1. It ought to rehearse the Recovery in the *Quare Impedit*, *Nat. br. 47. C.* because that is the ground of the Writ.

2. It ought to be brought in the County where the refusal was, because he shall recover nothing but damages, *Vet. Nat. 25. B. Nat. 47. F. Coke 7. part. 3. A. Bulwers case, 38 Hen. 6. 14. & 15. 39 Edw. 3. 2. pl. 5. 29 Hen. 8. Dyer 40. pl. 69.* and the damages can be best enquired and known there.

The

The Count.

The writ was against the Bishop, and counted, although the Vicar general refused, and yet good, 13 *Edw. 3. Quare non admisit* 4. *Vet. Nat. br. 26. A. vid. antea*, why so.

The King counted not upon what original or what Title he recovered, and yet good, 20 *Edw. 3. Quare non admisit* 10. for he is not bound to be so punctual in pleading as a Common person, for it sufficeth if it be good in the substance.

The Barr.

That he admitted him, and made Letters to the Archdeacon to induct him, a good barr, 38 *Hen. 6. 14. Nat. br. 47. H.* for this doth disaffirm his Writ.

That the Bishop collated by Lapse is a good barr, *Nat. br. 47. M.* for by that the Plaintiffs Title is destroyed *hac vice*.

Or that it was litigious by the presentment of a Stranger, 9 *Edw. 3. Quare non admisit* 12. 34 *Hen. 6. Quare Impedit* 89. 34 *Hen. 6. 41. pl. 10.* and so the Ordinary could not know who was to be admitted.

But if *A* and *B* contend, by reason of which the Bishop collates by Lapse, and after the King recovers in a *Quare Impedit*, this is no barr in a *Quare non admisit* brought by the King, 23 *Edw. 3. 22. Quare non admisit* 11. for the Kings Title was eigne to the collating.

Excom-

Quare Impedit.

Excommunication cannot be pleaded in the Plaintiff, because the Writ supposeth a contempt in the Ordinary, in that the Plaintiff hath presented his Clerk in the Writ named after Judgment given for him, which supposeth him not Excommunicated; but a good plea, that the Incumbent did not make request after Judgment, 21 Hen. 7. 71. pl. 14. *Crooke*; for without request the Ordinary is not bound to take notice.

No such Record is a good plea, *Coke* 8. part. *Dreuries* case; viz. as he pretends he hath Judgment upon.

A good barr, that the Church was full before the Recovery of one not named in the Recovery, *Nat.* 47. K. and so the Ordinary had no cause to admit his Clerk.

The Bishop returned, that the Advowson is seised into the hands of the King, by reason of Wardship, and is so full of the Kings presentment; this is good, 9 Eliz. *Dyer*. 260. pl. 21. *tamen* *Coke* 6. part. 52. A. *Boswells* case, *è contra*. Q.

The Judgment.

The Judgment is but to have dammages, *Nat.* br. 47. G.

Quare Incumbravit.

In what Court it shall be brought.

It is a Writ Original, and therefore it ought to issue out of the Chancery, *Nat.* br. 48. G. as all Originals do; for the Chancery is *Officina brevium*.

But

But it shall be brought in *Com. Ban.* because it is a Common plea, *Vet. Nat.br. 26. B. viz.* made returnable there.

And although the Record be removed out of the Common pleas, *Nat.br. 48. F.* because it is an Original Writ, *per Shard 17 Edw. 3. 55. A.*

But the King may bring this in *Ban. Regis*, although the Record be in *Com. Ban.* But a Common person shall not. *Nat.br. 48. F. 17 Edw. 3. 50. pl. 21.* for the King may sue in what Court he pleaseth, though a Subject in some cases is confined.

What person shall have it.

The Plaintiff or Defendant in a *Quare Impedit*, or *Darrein Presentment*, that recovers; for by the Recovery it appears they have Title.

Against whom it lies.

It lies against the Bishop, *Vet. Nat. br. A.*

In what Cases this lies not.

It lies not in right of Advowson, *Nat.br. 48. Q.* for that concerns not the presentation.

It lies not unless a *Ne Admittas* be first directed to the Bishop, a *Quare Impedit* depending, *Vet. Nat. br. 26. B. Nat.br. 48. H.* for by that he is to take notice of the Suit, which otherwise he is not bound to.

Yet it was maintained, although no other Writ was first attained, *Vet. Nat.br. 27. A. Q.*

It

It lies not, unless the party hath recovered before by Judgment of the Court, *Nat. br.* 48. *E.* 17 *Edw.* 3. 50. *pl.* 21. and so cleared his Title.

The Incumbring by his Collation ought to be alledged to be within six Months, *Nat. br.* 48. *L.* for after the six Months there can be no incumbrance in respect of the Lapse.

And if he admit the Clerk of the other person after the six Months, which was presented before the Action, the Writ lies, *Nat. br.* 48. *L.*
Quere.

The Writ is Original and issueth out of the Chancery only, *Nat. br.* 48. *G.* 17 *Edw.* 3. 74. *B.* vide the Writ *Nat. br.* 48. *O. Regist. orig.* 32. *A.*

It ought to be brought in the County where the Church is, because the Clerk of the Bishop shall by this be removed, and the Clerk of the other admitted, *Coke* 7. *part.* 3. *A. Bulwers case,* *Nat. br.* 48. *D.* 38 *Hen.* 6. 14. *pl.* 32. and the wrong is done in the County where the Church is, and that County may have best consuance of the cause.

It ought to make mention of the Recovery, *Nat. br.* 48. *K. Regist. orig.* 32. *B.* But 18 *Edw.* 3. 17. by *Wilby* he ought not to mention it.
Quere.

The Writ needs not mention before what Justices the Recovery was, and yet good; for the Recovery is the substance, and the Court is not material, *quere tamen*, 18 *Edw.* 3. 17. *pl.* 19. 17 *Edw.* 3. 74. *pl.* 109. the Writ; 1. It needs not mention where the Court was, when the Recovery had

had, because it is an Original Writ, and the Court is fixt. 2. Nor that the Bishop Incumbred it within the six Months, for it shall be intended so. 3. It is good, although it bore date within the six Months, for it shall be maintained after the Recovery, and the party shall have it. 4. It lies in *Com.Ban.* although that the Record be removed, because it is an Original Writ. *vid. antea.*

The Count.

The Count ought to mention the Recovery, *Nat.br.48.K.* because it is the ground of the Action.

It needs not to recite all the Record of the Recovery, although that it was recovered by *Darrein Presentment*, but the substance of it, 17 *Edw.3.35. pl. 34.*

The Count mentions, that the Bishop did Incumber (the Writ depending) the Church, yet good, 17 *Edw.3.74. pl. 109.*

If one Writ be abated, the Plaintiff in another Writ may vary from the former Count, *Nat. br. 48.M.* for he now begins *de novo*, and is as if he had not counted before.

The Procest.

It is Summons, Attachment, and Distress, *Vet. Nat.br.26.B.*

The

The Barr.

The Church was Litigious, and that he did Collate by Lapse, 34 Hen. 6. 38. *Quare Impedit*, 89. a good barr. *antea*.

No such Record a good barr, *Vet. Nat. br. 26. B. antea*.

Error brought, and the Record removed in *Ban. Regis*, no barr, *Vet. Nat. br. 26. B. Q.*

Did not Incumber after the prohibition of the Court to him delivered, is a good barr, *Nat. br. 48. M.* for before he was not bound to take notice of the Suit.

The Judgment.

It is to have his Presentment and his Damages, *Nat. br. 48. H. 38. Hen. 6. 14. Coke 7. part. 3. A. Bulwers case, 21 Edw. 3. 3. pl. 7.*

If the Plaintiff be Nonfuit, yet it is not to him peremptory, *Nat. br. 48. M.* but he may commence a new Action; for he may be Nonfuit, and yet have a good Title.

Replevin.



Replevin.

In what Court it lies.

IN the County Court by plaint, *per le Stat. de Marlebridge, cap. 21.*

And this may be before the day of the Court, 9 *Edw. 4.* 48. 21 *Edw. 4.* 66. *pl. 46.* For the conveniency of the people.

But by the Common Law the Sheriff cannot make a *Replevin* without a Writ, 8 *Eliz. Dyer.* 256. *pl. 67. viz.* out of the Chancery.

In the 5 Ports, *Regist. Orig. 79. A. Nat. br. 67. A.* By special privilege.

In a Court-Baron by plaint, but this ought to be entred *Sedente Curia*, 21 *Edw. 4.* 66. *pl. 46.*

In Ban.Regis, or Com. Ban.

An ancient Demean is a good plea to out the Court of jurisdiction, because the reality may come in debate upon the *Replevin*, which ought to be tried there, *Coke 5. part 105. Aldens case, vide 2 Edw. 3.* 32. *pl. 10.* 17 *Edw. 3.* 52. *pl. 28. & fol. 75.* 40 *Edw. 3.* 4. *pl. 9.* 29 *Edw. 3.* 9. *pl. 29.* 4 *Edw. 3.* 123. *pl. 34.*

It lies not in the Marshalsey, *Coke 10. part. 74. Marshalsey.* For that is a limited Court, and holds not plea of all Actions.

Who shall have a Replevin.

Admini-
strator.

Administrator shall have a Replevin *de bonis Testatoris, vid. the Count. Lib. Intra. 560. B. sect. 2.* for the benefit of the Intestates Estate.

Husband
and Wife.

Husband and Wife join in a Replevin for a Distress taken upon the Land of the Wife, *2 Edw. 2. Replevin 42. Digest. brevium. 53. sect. 2.* For they are both concerned, the Husband in right of his Wife, and the Wife in her own right.

But for goods of the Wife sole taken, which takes a Husband, the Husband alone shall bring the Action, *Nat. br. 69. K. 33 Edw. 3. Repleg. 43.* For by the Marriage the Goods and right to them are his.

Baylee.

If Goods be bayled to A, he shall have a Replevin of them against a stranger, *21 Hen. 7. 14.* For he hath a property in them against all the world, but against the Bailor.

Executor.

An Executor shall have it for Goods taken in the Testators time, *17 Edw. 3. Executors, 106. 24 Edw. 3. Avowry, 257. 21 Hen. 6. 1. B. Markham.* For the right and title to the Goods is come un'o him by the Executorship.

Executors shall have it for the Goods in their hands that were the Testators. *Regist. Orig. 81. B. 5 Edw. 3. 133. pl. 14. 18 Edw. 2. Repleg. 24. 18 Edw. 3. Severance, 28.* For now the interest is theirs in trust.

And

And when he brings it of his own possession, he shall have it before the Probat of the Testament, *Com. 281. A.* in regard of the property which is in him thereby.

Joint-Tenant or Tenant in Common may join in a Replevin, *11 Hen. 6. 31.* in respect of their joint interest.

Joint-Tenant, or Tenant in Common.

But if two others join, the Writ shall abate, *11 Hen. 6. 31. 3 Hen. 4. 16. 21 Edw. 4. 23.* For one Writ cannot try distinct interests, but there must be several Writs.

But in a *Homine Repleg.* strangers may join, *Nat. 66. F. 8 Edw. 4. 16. pl. 19. Propter favorem libertatis*, and yet *8 Hen. 4. 2.* is, that they shall not join. *Q. Ergo.* It seems needless for two to join, because the Writ may be as well prosecuted by one.

Parson shall have a Replevin of a Mortuary after Seifure, but not before, *Com. 281. A. Foxes case. 10 Hen. 4. 1.* For before he had no property in it, but a bare right.

Parson;

For he had not property before Seifure, *16 Hen. 7. 5. pl. 3. Brian.* The Seifure gains a property in it.

1. He that hath not the property in a thing, shall not have a Replevin for it. *6 Hen. 4. 2. pl. 17. 7 Hen. 4. 18. 11 Hen. 4. 17. pl. 39. 2 Hen. 6. 14. pl. 10. 20 Hen. 6. 18. A. 35 Hen. 6. 22. A. 39 Hen. 6. 35. pl. 47. 4 Edw. 2. 1. pl. 2. 9 Edw. 3. 340. pl. 19. Lib. intra. 568. C. scil. 5.* For a Replevin supposeth a property in the thing replevied by one.

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property against all strangers, as it is upon a Bailment, 3 *Edw.* 3. 71. *pl.* 36. 42. *Edw.* 3. 18. *pl.* 32. 21 *Edw.* 4. 54. *pl.* 24.

3. So he that hath them to manure his Land, 42 *Edw.* 3. 18. 11 *Hen.* 4. 29. 21 *Hen.* 7. 14. 21 *Edw.* 4. 54. *pl.* 24. 2 *Edw.* 3. 34. *pl.* 19. For he hath a property in them to that purpose.

4. So if one have Goods bayled to him, 21 *Hen.* 7. 14. *viz.* to keep, or to bail over as it seems. *Q.*

Lord.

The Lord of a Villain shall have it for Cattel of a Villain taken, for the bringing of the Action is a sufficient claim of the Cattel, and there needs no seisure, 42 *Edw.* 3. 18. 33 *Edw.* 1. 3. *Repleg.* 43. 30 *Edw.* 3. *Repleg.* 36. 19 *Edw.* 3. *Repleg.* 32. 9 *Hen.* 6. 26. *Babington.* *Nat. br.* 69. F.

But he shall not have damages for the taking, but only for the Detainer, *Nat. br.* 69. F. For he could have no damage, because before the claim they were none of his.

Successor.

Successor of an Abbey shall have it for taking any thing in the time of his Predecessor, 9 *Hen.* 6. 25. *pl.* 21. *Martin.* For now he is concerned in right of his house.

Against whom a Replevin lies.

Baylee.

It lies not against him that hath Goods delivered to keep, *Lib. Intra.* 569. B. *sed.* 1. For he comes lawfully to the possession of them.

King.

It lies not against the King, nor where he is party, nor where the taking is in right of the King, 3 *Hen.* 7. 1. *Keble.* This by his Prerogative.

tive. It is supposed the King will do no wrong.

It lies against a Lord that distrains wrongfully, although the goods come again to the owner, *Nat. br. 69. H.* that the party injured may recover dammages.

It lies against the Sheriff, and the Writ shall be in the common form, and he shall be named by his proper name. *Regist. Orig. 81. B.* during his Office, but not as an Officer, but as a private person. *Q.* to whom the Writ shall be directed. It seems to the Coroner.

Of what things a Replevin lies.

It lies of Cattel, *Regist. Orig. 81. Coke 1. part* Cattle. *141. Mayowes case, the count. Lib. intra. 570. C. sect. 123. 4. Coke 1. part. 54. A. Capels case.* and the Replevin needs not mention the Colour or Value of them, but only the Kind and Nature; that the Sheriff may know of what to make retorne, in case the distrainer recovers.

But he ought to shew the place where they were taken; for the taking of them in another place shall abate the Writ, *2 Hen. 6. 14. pl. 10. 35 Hen. 6. 40. pl. 1.* for the falsity of it, and it shall not be accounted the same taking.

It lies of Wood within the Forest, *Regist. Wood Orig. 86. B. viz. Wood felled. Q.* if he must shew what Wood it is.

Replevin lies of a Barge, *2 & 3 Marie, Dyer. Barge. 117. pl. 73.* If taken *infra corpus Comitatus.*

Mastiff.

It lies of a Mastiff-Dog, 12 *Hen.* 8. 3. For the Owner hath property in him, and he is a useful Creature.

Of a Leveret, 2 *Edw.* 2. Distrefs 20. 2. For it is but a thing of pleasure, if alive.

Deeds.

It lies not of Deeds of Land, because they are Real, 4, *Hen.* 10. pl. 4. And a Replevin is not a real Action meerly.

Bees.

It lies of a Hive of Bees, *Regist. orig.* 81. *A.* For the Owner hath a property in them, and they are valuable.

Ferret.

It lies of a Ferret, 2 *Edw.* 2. Avowry, 142. for the same reason.

Grain.

It lies of Grain in a Wagon loaded, *Lib. intra.* 560. *B. sess.* 2. 562. *D. sess.* 3. 2. together with the Wagon, or without it.

Man.

It lies of a man, if he be not committed by the command of the King or his Justices, or for the Death of a man, *Regist. orig.* 77. *B. Nat. br.* 66. *E.* that is, be kept prisoner without any Suit or process in Law.

Or by Justice of the Forest outlawed, approver, taken for Felony with the manner, breaking prison, known Thief, appealed by an approver, burner of a House, or counterfeiting the Money or Seal of the King, or taken by an *Excommunicato Capiendo*, or for Treason, Convict of Reditheisin, *Nat. br.* 66. *E.* For these are Capital Crimes.

But if a man be taken for Trespass in a Forest, he shall be replevied, if detained against pledges, *Regist. orig.* 80. *A.*

And the Writ shall be directed *Custodi Forestæ*, and if he be not delivered, then a Replevin shall
issue

issue to the Sheriff, and an Attachment to attach the Gardein of the Forest, *per Stat. 1 Edw. 3. cap. 8. Statute 1. Regist. orig. 80. B. Nat. br. 67. A, B & C.* Little use there is now of this Law.

And so for a Trespass in the Kings Chase, *Regist. 80. B.* because the Chase remains at the common Law, *Nat. br. 67. D.* and is not ordered by Forest-Law.

And so if a man rescues one Indicted and Convicted for a Trespass in the Forest, *Regist. Orig. 81. A.* and the rescuer detains the party.

If one takes Sheep which afterwards have Sheep and Lambs, it lies of all, *Nat. Br. 69. D. 18 Edw. 3. Lambs. 48. pl. 55.* So of a Sow with Pig, a Mare with Foal, &c.

It lies of a Park seised into the hands of the Park. King, *Regist. 80. B. Nat. br. 67. E. 2.*

It lies of a Sow and Pigs which were not pig- Sow and ged at the time of the taking, *12 Edw. 45. pl. Pigs. 10. 18 Edw. 3. 48. Nat. br. 69. D. 2.* Whether of a Bitch and her Whelps.

It lies of Cows and Calves not calved at the Cows and time of the taking, *Nat. br. 69. D. 18 Edw. 3. Calves. 48. pl. 55.*

It lies of Yarn, *Mich. 39 & 40. Eliz. com. Ban. Yarn. Burley versus Read,* and generally for any thing that may be distrained.

The Writ.

If a live and dead thing be put in one Writ, the live shall be put first, *Regist. Orig. 81. B. propter excellentiam rei.* A living Dog is better than a dead Lion,

If it be of more live things, ye shall say, *Averia*. *Regist. orig.* 81. *B. Nat. br.* 68. *D. Com.* 229. *A.* For that is a word of large extent, comprehending all four-footed beasts.

And if the Writ be *Averia*, and the Count be *de Bonis & Catallis*, it is not good, because the Count is more large than the Writ, 2 *Hen.* 4. 25. *pl.* 28. For *Bona & Catalla* comprehends all manner of Goods, as well dead as living things.

If it be of a live thing, it shall be named particularly, *Regist. orig.* 81. *B. Nat. br.* 68. *D. Com.* 229. *A.* 20 *Hen.* 6. 42. *pl.* 21. *viz.* the kind of it.

If it be of more dead things, it shall be said *Catalla*, and not *Averia*, 2 *Hen.* 4. 25. *pl.* 28. *Nat. br.* 68. *D.* If it be of one dead, it shall be named, *Nat. br.* 68. *D. Regist.* 81. *A.* For the more certainty.

Misnomer
of the
Place.

The Defendant shall not plead *Misnomer* of the place, but may say that he took it in another place, 16 *Hen.* 7. 5. *pl.* 4. *fol.* 7. *pl.* 9. and not in the place alledged by the Plaintiff, and this is a good traverse.

County.

Distress in one County, and impounded in another County, Replevin lies in any of the Counties, *Nat. Br.* 69. *I.* For it is a continuing wrong from the taking to the impounding.

Village.

It is a good plea that the Defendant took the Cattel in another Village, 2 *Hen.* 6. 14. *pl.* 10. For then it shall be presumed not to be of the same taking.

- The Proceſs. 1. Of a man Replevied.
2. Of Chattels.

Repleg. alias pluries & Attachment againſt the Sheriff, Nat. br. 66. F. 167. B. to make a return.

1.

If the Sheriff return him not repleviſable, a *Capias in Withernam* ſhall iſſue, Regiſt. orig. 79. A. 80. A & B. That is to take the perſon of the man that detained him, or hath elongated him.

If upon the *Capias in Withernam*, a *Non eſt inventus* of the perſon be returned, then a *Capias in Withernam* ſhall iſſue againſt his Goods, Nat. br. 68. C. to make the Owner appear.

Repleg. alias and pluries, Nat. br. 68. E, F, G.

And an Attachment to the Coroners againſt the Sheriff, Regiſt. orig. 81. A. for not making his return.

2.

Upon a return that the Bayliſſ of a Franchiſe makes not an Answer, or will not make deliverance, there ſhall be a *Non omittas propter aliquam libertatem*, but it ſeems that the Sheriff ought to do it without a Writ, Nat. br. 68. F. in favour of Liberty. *Quia tamen*.

If the Sheriff return

Fugavit, in another County.

That the Bayliſſ of the Liberty returns *elongata*.

Or that he cannot have the view.

Or that the Cattel *elongata ſunt* out of the County.

Or

Or that the Bayliff of the Liberty returns that they are impounded within the Rectory of S.

In all these Cases *Withernam* shall be awarded, *Nat. br.* 68. G. 69. A. because the Sheriff cannot execute the Writ of Replevin.

And upon this three *Capin's* and an *Exigend.* shall issue, 5 *Edw.* 4. 18. A. by *Danby*.

The Writ of *Withernam* ought to rehearse the Return of the Sheriff. *Nat. Br.* 69. B. For upon that it is grounded.

Vid. The Writ *Regist. Odg.* 82. A. No. Lib. *infra.* 611. B. *sect.* 21.

If the Replevin be in the County-Court *per* plaint, and the Bayliff return *elongata*, the Sheriff ought to enquire by Inquest whether it is so or not, and then *Withernam* shall be awarded by him, if it be true; and if he refuse to grant the *Withernam*, the party shall have a Writ against him, and an *Alias pluries*, and an Attachment, *Nat. br.* 69. C. directed to the Coroner.

Second Deliverance.

At the Common Law a man may be non-sued in a *Repleg.* and have a new Replevin *infinite*, 34 *Hen.* 6. 37. *Danby.* 10 *Hen.* 7. 29. *pl.* 23. 19 *Hen.* 8. 12. *pl.* 7. 2. For by this means the other party is delayed:

And if the Writ abate *per Plea* or Confession, there shall be another Replevin, 34 *Hen.* 6. 37. and not a second Deliverance; for this abatement was not by wilful fault of the party. But

But by *Westm. 2. cap. 2.* if one be non-suited in a Replevin, he shall have but a *Second Deliverance* out of the Rolls of the former Judgment, and not a new Replevin, 19 *Edw. 2. Repleg. 25. 4 Hen. 6.* Return of Cattell, 6. 21 *Edw. 4. 6. 2 Hen. 4. 23. 30 Hen. 8. Dyer 41. pl. 4. 21 Edw. 4. 6. pl. 16. 32 Edw. 3.* Return of Cattell, 18.

But if Judgment be given against the Plaintiff in a *Repleg.* upon a Demurrer or Verdict, no *Second Deliverance*, 2 *Hen. 4. 23. pl. 9.* But then the party is barr'd by judgment of the Court.

And *Second Deliverance* shall not be, but in the same Court, *Com. 206. B.* where the Replevin was brought, and can best take notice of the Cause.

Yet if he be non-suited in the County Court, and it be removed in *Ban.* then it shall issue out of the *Ban.* 13 *Edw. 3. Repleg. 37.* For there the Cause is now depending.

And if he be non-suited in the *Second Deliverance*, he shall not have another Writ, 4 *Hen. 6. 8.* Return of Cattell, 6. *viz.* of *Second Deliverance*; for this is final.

Second Deliverance is a Writ judicial, issuing out of the former Record, per 2 *Westm. cap. 2.* depending.

Vide the Writ *Lib. Intra. 572. B. sect. 2, 3, 4.*

Vide the Count, *Lib. intra. 572. B. 5. 6. No. Lib. intra. 589. A. sect. 8.*

And if a man be non suited in a *Repleg.* after the Declaration, the *Second Deliverance* ought to agree with the Replevin in day, place and number or Cattell, &c. 3 *Hen. 6. 9. pl. 10. 21 Hen. 7. 28. vid. 12 Hen. 7. 4. 49 Edw. 3. 29. Persay.*

Perſay. For it is to continue the ſame Suit.

But 16 *Edw.* 3. *Ayd* 131. *Tborpe.* 17 *Edw.* 3. *Repleg.* 22. 26 *Hen.* 6. *pl.* 7. It may vary from the place. *Q. tamen.*

And *per* 26 *Hen.* 8. *pl.* 27. *Fitz Herbert*, it may vary from the number and day; ſo there be a certain deſcription of them, *Q. tamen.*

Repleg. of a Heifer, the ſecond deliverance was of a Cow, and good, 26 *Hen.* 8. 6. *pl.* 27. For a Cow and a Heifer *non variant ſpecie*; for they differ only in age and appellation.

Upon a Non-ſuit in *Repleg.* return awarded, and upon *Withernam* awarded, and other Cattel taken, yet the ſecond deliverance ſhall be of the former Cattel; for ſo the Writ imports, 36 *Hen.* 1. *Dyer* 59. *pl.* 14. 2 *Edw.* 3. 17. *Avowry* 171. 22 *Hen.* 7. 92. *pl.* 7 *Crooke*, there ſhall not be a ſecond deliverance, becauſe the Plaintiff had eſtrayed the former.

Husband had aid of a Wife in a Replevin, and makes default, the Wife cannot joyn in the ſecond deliverance, 18 *Edw.* 2. *Repleg.* 23. For ſhe is not the principal actor in the Replevin, but the Husband.

Diſtreſs.

In what caſe a man may diſtrain.

For Fine
or Amer-
ciament in
a Court
Leet.

A man may diſtrain for a Fine or Amerciament in a Court-Leet, *Coke* 11. *part.* 45. *A. Godfreys* caſe; for a Fine and all Amerciaments in a Court-Leet Diſtreſs is incident, 5 *Edw.* 3. 139. *pl.* 43. 10 *Edw.* 3. 303. *pl.* 10. by the Common Law.

For

For a Fine imposed in a Leet, *Coke* 8. *part.* 41.
A. Griesleyes case.

For breaking of a By-Law in the Leet of the Lord, he may distrain for the Amerciament, *Coke* 6. *part.* 25. *A.*

Distress is incident to an Amerciament in a Court-Leet, 9 *Hen.* 7. 2. *pl.* 22. 8 *Hen.* 4. 15. *pl.* 16. *Gascoigne.* 12 *Hen.* 7. 15. B. 4 *Edw.* 3. 95. *pl.* 24. 29 *Edw.* 3. 28. *pl.* 30. *Doct. & Stud.* 24. *A.* 5 *Edw.* 3. 159. *pl.* 21.

Collector of a Tax granted by Parliament, Tax by
may distrain him that will not pay when the Parlia-
rishioners have assessed it, 22 *Edw.* 3. 10. *pl.* 52.
and justifie by the Act that granted it.

A man shall be amerced for not doing of suit Amercia-
in a Court-Baron, 9 *Hen.* 7. 22. *Wood & Read,* ment in a
Coke 4. *part.* 95. *A. Slades case,* 21 *Hen.* 6. 39. Court Ba-
pl. 8. and not distrained. ron.

And for such Amerciament he shall distrain,
9 *Hen.* 7. 22. *per* two Justices by special prescrip-
tion, *No. Lib. intra.* 570. C. Q.

For Amerciament in a Court-Baron a man
may not distrain, 16 *Hen.* 7. 14. *pl.* 9. 21 *Hen.*
6. 39. *pl.* 8.

The Lord may prescribe to distrain for an A-
merciament in a Court-Baron, 15 *Eliz.* *Dyer.*
322. *Coke* 11. *part.* 45. *A.* and such prescription
is good.

Yet *Doct. & Stud.* 74. *è contra.* Q.

Crooke

Crooke. If an Amerciament was at the Court-Leet, he may distrain, otherways not, *Crooke*, 20 *Hen. 7. 66 pl. 8.* Q. What remedy is then for it? for it seems debt lies for it.

Amerciament in a Tourne.

Special prescription in the Sheriffs Tourne to Amerce, and for this there was a special prescription for a Distress, 33 *Hen. 8. 30. pl. 2.*

Tax by the Inhabitants.

A Tax was made by the Inhabitants of a Parish, and a Distress taken for it, and good, *Doll. & Stud. 74. B.* by prescript.

Suit to a Mill.

A man may distrain for suit to a Mill, 22 *Hen. 6. 14. 9 Edw. 3. 356. Nat. br. 122. M.* For it is a profit, and valuable.

Rent-service.

A man may distrain for Rent-service, and all manner of services, *Doll. & Stud. 74. A.* For it is a Duty issuing out of the Land held.

A. gives Land to *B.* for him to serve in such a place when he shall be requested, he may distrain, 22 *Hen. 6. 33. A.* Q. if he were never seised of the Service.

Herriot. Difference between seising and disseising.

For Herriot-service a man may distrain, 44 *Edw. 3. 13. pl. 24. 27 Assize. pl. 24. Com. 96. Mantels case. Doll. & Stud. 75. A.*

But for Herriot-custom he can but only seize, 2 *Edw. 2. Herriot 7. 8 Hen. 7. 10. Doll. & Stud. 75. A.* And if he cannot seize, he hath no remedy.

And for Herriot-service a man may seize, 18 *Edw. 3. 22. pl. 4. 38 Edw. 3. 7. pl. 27. 16 Ed. 3. Herriot 2. 6 Edw. 3. 277. pl. 10.* And Distress for Herriot-service is more worthy than Herriot-custom.

For a certain Leet.

A man cannot distrain for a certain Leet without prescription, because it is against common right,

right, *Coke 11. part 44. Godfreyes case. vide 6 Edw. 3. 10.* so that a prescription binds common right.

And the Tything-man that prescribes to have it of the Reliants, ought to prescribe to distrain, *6 Edw. 3. 189. pl. 26. Coke 11. part. 44. B.* else he cannot:

A man may distrain for Ayd for marrying his Daughter, or making his Son Knight, *Glanvil, Lib. 9. cap. 8. 5 Edw. 3. 138. pl. 38. 39 Edw. 3. 34. pl. 40. 40 Edw. 3. 22. pl. 21.* This by tenure is due to the Lord.

For suit to his Hundred Court by reason of tenure, there shall be a distress of common right, *Lib. infra. 608. B. 5 Edw. 3. 152. pl. 32. 9 Edw. 3. 356. pl. 39.* to compel it to be done, or recompence for not doing it.

Suit to the Hundred.

The Lord may distrain for relief, and hath no other remedy, but his Executor shall have debt, and shall not distrain, *Coke 4. part. 49. B. 7 Hen. 6. 13.* as for a duty vested in the Lord to whom it was a personal service.

Relief.

A man cannot distrain for money due for Agistment, but shall have trespass, if that they chase the Cattell out of the Land before the Agistment be paid, *Regist. Orig. 92. A. 30 Edw. 3. 11. pl. 6. Q.* whether debt lies not for it against him that agisted his Cattell.

Agistment.

An Inn-holder cannot distrain for his Victuals provided for his guests, *3 Edw. 3. Distress 19.* but may have an action of debt for the value of them.

Inholder.

He that takes Cattell as Estrays, may distrain them until he be satisfied for the Meat, *44 Edw. 3. 13. pl. 25.* by the owner of them, if they be claimed within the year and the day.

Estray.

A.

Pledge.

A. indebted to *B.* for tabling, delivers Goods to him until he be satisfied ; *B.* may distrain them until he be paid, 46 *Edw.* 3. 30. *pl.* 39. that is, he may keep them ; but this is upon the special agreement.

Toll.

For Toll a man may distrain, 30 *Edw.* 3. 15. *B.* 11 *Hen.* 6. 39. 9 *Hen.* 6. 45. 20 *Hen.* 7. 1. *Marrowe. viz.* Toll of a Market or Fair, this seems not to be of common right.

But *Trin.* 28 *Eliz.* *Ban. Regis. Rot.* 963. the Village of *Northampton* distrained for Toll, and alledged not a special Title, or prescription to have Toll, and for this it was adjudged against them.

Damage
feasant.

A Commoner may distrain the Cattel of a stranger, damage feasant upon the common of common right, *Coke* 9. *part.* 112. *B.* 7 *Edw.* 3. 266. *pl.* 39. 24 *Edw.* 3. 42. 46 *Edw.* 3. 23. 15 *Hen.* 7. 2. & 12. 13 *Hen.* 8. 15. *B.* in respect of his interest in the Common.

Forfeitures

The Officers may distrain for the Forfeitures of Inn-keepers, and sell the Distress, 1 *Jac. cap.* 9. by Statute. *vid.*

The Lord may distrain for the Forfeitures of Innates, or for erection of Cottages, *Stat.* 31 *Eliz. cap.* 7. *vid.*

Distress may be taken by Surveyors of High ways, 18 *Eliz. cap.* 10. from those that make default in labouring. By the *Stat.*

Arrerages.

Tenant in Dower cannot distrain for Arrerages of Rent due before the Recovery of her Dower, 40 *Edw.* 3. 22. *pl.* 19. For the Tenants were not bound to pay her.

A Lease of Tithes rendring Rent, there shall be no distrefs, because the Tithes are the very thing leased, 11 *Hen.* 4. 40. and therefore cannot be distrained no more than Land lett, and the rent issues not out of the Tithes.

A person claims rent by prescription, and distrains for it, *Lib. intra.* 557. Charge 1. and good. Rent by prescription.

A. grants a Rent-charge to *B* in Tayl, and grants, that if the Bayliff of the King distrained, the party might distrain, 46 *Edw.* 3. 18. and good by the contract. Rent-charge.

Rent granted by Fine, and Distrefs appointed to the Justices of the *Com. Bar.* or Barons of the Exchequer, they may distrain, 38 *Edw.* 3. 33. So if the Distrefs had been appointed to any others, they might distrain by vertue of the Fine.

Of what things a man may distrain.

Money cannot be distrained, unless it be in a Money. Bag sealed, or a Chest locked, 22 *Edw.* 4. 50. *B. pl.* 17. 41 *Edw.* 3. Distrefs 14. For then it may be known and replevied, else it cannot.

Cattel in a Wagon, *viz.* fastned to it, may be distrained, but out of a Wagon they cannot, 2 *Hen.* 4. 15. *pl.* 17. 41 *Edw.* 3. Distrefs 14. 22 *Edw.* 4. 50. 11 *Hen.* 7. 14. *pl.* 8. 21 *Hen.* 7. 39. *pl.* 55. because there can be no Return, neither doth a Replevin lie of them. *Q.* It seems because Cattel of the Plough are not distrainable, so they shall be adjudged if they be loose; but when they are in the Wagon, it is known they are for other uses. *Q.* Cattel in a Wagon.

A a

The

Lord.

The Lord cannot seize the Cattel, and put them in a Wagon, and then distrain them, 18 *Edw.* 3. 4. For by this means no Cattel of the Plough would be privileged from distraining.

Horse.

A Horse at the Smiths Shop, or a Garment in a Taylors Shop, or an Horse in an Hostrey shall not be distrained; for this would hinder publick commerce and dealing; But if the Saddle be on the back of the Horse when he is at the Shop, he may be distrained, 22 *Edw.* 4. 40. *pl.* 15. 15 *Rich.* 2. A Vowry 19. because it seems he is then as it were in the Owners custody. *Q. tamen.*

A Horse upon which I ride over my ground, the Lord cannot pursue, and take him as a Distress, 6 *Rich.* 2. Rescous 14. So if I have him bridled in my hand, as it seems; for that is to distrain the man as well as the Horse.

A Horse of any man through the whole Village shall be distrained for the Fees of the Knights of the Parliament, 11 *Hen.* 4. 2. For the Law looks upon the Village in general, and every one is liable for the whole, if he be able.

If a man be taxed to Fifteens, having Cattel levant in another Village, when they come within the Parish they shall be distrained, 18 *Edw.* 3. 11. *pl.* 39. For the Parish is liable with the Tax.

If a Horse of a Stranger escapes into the Land of him that hath lost Issues, he shall be distrained, as it seems, 5 *Hen.* 7. 1. *Q.* For it seems hard.

If

If the best Beast be estrayed, the Lord may distrain any Cattel in the Land, 27 Assize pl. 24. viz. where the Lord is to have the best Beast; but it seems they must be levant and couchant.

A Goshawk distrained, and the Distress justified, 16 Edw. 4. pl. 9. viz. a reclaimed Goshawk, for in that one may have a property, and it is valuable. Goshawk.

Fishes in a Pond cannot be distrained, *Cronker* Fishes. Reports 188. because they cannot be known what they are, nor can be replevied.

A Hive of Bees shall be distrained, as it seems, Hive of for a Replevin lies of them, *Nat. br.* 68. D. Q. Bees. if it be in the day-time, how it can be.

A Door or Window is not distrainable, 11 Door or Edw. 3. *Cessavit.* 21. 21 Hen. 7. 26. 14 Hen. 8. window. 25. *Brudenel.* For it is part of the Freehold.

A Millstone that is severed for picking shall Millstone. not be distrained, 14 Hen. 8. 25. For it is part of the Mill.

An Anvil shall not be distrained, 14 Hen. 8. Anvil. 25. For it is part of the Smiths Tools he gains his Livelihood by.

A Barge was distrained by prescription, 3 Mar Barge. *Dyer.* 117. pl. 73. and held good, for that may alter the Law.

The Lord distrained Cattel for services before Lord. they were Levant and Couchant, 4 Edw. 3. 37. Issue joined, 8. 22 Hen. 6. 37. 15 Hen. 7. 17. *Doct. & Stud.* 15 A. and well, as it seems.

Sheep shall be distrained, if other distress can- Sheep. not be found at the day of the distraining,

29 *Edw.* 3. 16. else not in respect of the hindrance of clothing.

Plough. Cattel of the Plough shall not be distrained, if there be other distress sufficient, 14 *Eliz.* *Dyer.* 3 12. *pl.* 86. else they may; for otherwise the party may be without remedy.

Cattel in Dower. Cattel delivered by the Sheriff to the Tenant in Dower for seisin of Rent shall not be distrained for Arrerages of the Rent, 40 *Edw.* 3. 22. *pl.* 19. For the shall not take such advantage.

Yarn. Yarn brought upon a Horse to a Neighbour to weigh, this the Lord cannot distrain for Rent, because it was brought for a special intent, *Mich.* 39 & 40 *Eliz. com. Ban. Burleigh* versus *Read.* and it would hinder publick commerce and dealing.

Cattel. If Cattel put into Black Acre, and they stray into White Acre, through default of enclosure, they shall not be distrained, 22 *Eliz.* *Dyer* 365. *pl.* 33. For the Owner is in no fault.

Default of Inclosure. A. ought to inclose against B, and leases to C, for 21 years, which leases to D, for 10 years, rendring Rent, the Cattel of B, for default of enclosure, escape into the Lands of A, and he pursues them; C cannot distrain, for no default was in the owner of the Cattel, 15 *Eliz.* *Dyer* 317. *pl.* 9. *vide* 39 *Edw.* 3. 3. *pl.* 12. and the Law doth not punish the innocent.

What

What Person shall distrain.

A Commoner shall distrain for damage feasant, Damage and is not tied to shew *per quod amisit Communi* feasant.

am, No. Lib. *intra*. 573. D. sect. 4. 24 Edw. 3.

42. pl. 23. Coke 9. part. 112. B. 46 Edw. 3. 23.

15 Hen. 7. 2. 7 Edw. 3. 266. pl. 39. 13. Hen. 8.

15. For the Distress there taken implies it.

Tenant at sufferance distrains, damages feasant. 4 Hen. 7. 3. and good; for he hath title against a stranger.

He to whose use before, 27 Hen. 8. could not distrain, because he had nothing in the Land, 15 Hen. 7. 2. pl. 4. but the Feoffee of the Land; but now it is otherwise.

Sheep bailed to a woman sole to dung her Land, Sheep. who takes a Husband, who commands the Owner to take them again, who refuseth, the Husband may distrain them, damage feasant, 43 Edw. 3. 32. pl. 3. For now they are damage feasant unto him in respect of his interest in the Land.

The Lord distrains Cattel, because the Tenant puts in more than he ought into the Common, 46 Lord. Edw. 3. 12. pl. 13. and good, for he ought not to surcharge the Common.

A. sold 50 Acres of Moor which lay common, Common. to B, yet every one of them ought to inclose against the other, and if the Cattel of the one go into the Land of the other, they shall be distrained, damage feasant, 23 Eliz. Dyer 372. pl. 10. For by the sale the Lands are severed.

At what time a man may distrain.

Services
and A-
mercias-
ments.

For Rent-services he shall not distrain in the night, 11 *Hen.* 7. 5. *pl.* 8. 12 *Edw.* 3. Distress 17. 10 *Edw.* 3. 21. *Coke* 9. *part.* 66. *A.* For the night is for rest, and all things ought to be then in peace.

After the Term ended no distress, 14 *Hen.* 4. 31. For then the privity betwixt the Lessor and the Lessee is gone. *Q.*

But 22 *Hen.* 7. 96. *pl.* 5. by all, if a Lease for years be ended, and the Lessee keeps in, the Lessor shall distrain for the arrearages. For that continues the privity as it seems. *Q.*

A Lease till *Mich.* for one year, rendring rent at *Mich.* he cannot distrain, because the Lease is ended at the instant, *Doct. & Stud.* 74. *A.* That is, at the day, and the Law admits not of Fractions of time.

Husband
and wife.

Husband leases the Wifes Lands, rendring Rent, th Wife dies without Issue, the Husband cannot distrain, because the reversion goes to the Heir, 9 *Hen.* 6. 45. 28 *Hen.* 8. *Dyer* 28. *pl.* 191. And the rent go with the Reversion.

Reversion.

A Lease for years, & grants the reversion to B, yet if the Cattel of B comes upon the Land, A shall distrain during the Term, 10 *Edw.* 4. 4. *tamen quare*, because he hath nothing in the Land.

Dammage
feasant.

For Dammage feasant in the night, one may distrain, and good enough, *Coke* 9. *part.* 66. *A.* *Mackally's case.* 11 *Hen.* 7. 5. *pl.* 8. 12 *Edw.* 3. Distress 17. 10 *Edw.* 3. 21. For else it might be mis-

mischievous in respect of the damages which might be done before the morning.

A. enters upon a condition broken, and takes the Cattel of the Lessee, damage feasant, *Quere.* 5 *Eliz. Dyer* 322. It seems he may; for he comes in upon a good Title.

A man may distrain damage feasant, although the owner make fresh suit, in respect of his satisfaction for the damage done, 7 *Hen.* 7. 1. *pl.* 11. 11 *Hen.* 7. 4. *pl.* 11. 10 *Hen.* 7. 21. *Doll. & Stud.* 15. *è contra.*

In what place a man may distrain.

A man fined in a Leet, being one of the Deziners, shall be distrained through all the jurisdiction of the Leet, although that he be of another dezin, *Coke* 11. *part.* 45. *A.* 11 *Hen.* 4. 89. 13 *Hen.* 4. 9. For he may, it seems, be liable in both places.

Leet.

A man shall distrain in any place within the precinct of the Court, 19 *Edw.* 3. 2. *Avowry* 225. 8 *Rich.* 2. *Avowry* 194. 47 *Edw.* 3. *pl.* 12. where the Amerciament is set, but not without; for there is no jurisdiction.

Tourne of the Sheriff

For Amerciament in the Sheriffs Tourne he may distrain throughout the County, 12 *Hen.* 4. 24. *pl.* 17. 13 *Hen.* 4. 9. 8. *Rich.* 2. *Avowry* 194. because all the County is within the jurisdiction of the Sheriffs turn; for it is the County-Court.

If a man had a Leet within his Mannor, he cannot distrain out of his Mannor, 4 *Edw.* 3. 96. *pl.* 26. For that is not within his jurisdiction.

For a tax by the Parliament

For a Tax by the Parliament, a distress may be justified

A a 4

What Distress shall be sold.

Court-
Leet.

A Distress taken in a Court-Leet shall be sold, although that a common person be Lord of the Leet, 3 Hen. 7. 4. pl. 15. Fairfax.

Inmate.

Distress taken by a Bailiff of a Lord of a Leet for forfeiture of Inmates, and sold by force of a grant of the Steward in nature of a *Seire facias*, No. Lib. Intra 666. A. Sell. 14. Q. whether by the Common Law.

Highways.

A Distress taken for a Fine touching High-

inmates, or for erection of Cottages, 18 Eliz. cap. 7. vid.

Distress may be taken by Surveyors of Highways, 18 Eliz. cap. 10. from those that make default in labouring. By the Stat.

Arrerages.

Tenant in Dower cannot distrain for Arrerages of Rent due before the Recovery of her Dower, 40 Edw. 3. 22. pl. 19. For the Tenants were not bound to pay her.

so in the latter, for then he might have distrained one Horse, or one Sheep.

1. *The Barr.* 2. *Justification.* 3. *Consuance.*
4. *Avow y.*

No Barr that the Plaintiff is possessed of the 1. Barr. Cattel, *Nat. b.* 69. *H.* for he ought to have damages for the wrongful distraining of them.

That he took them not, a good barr, *Lib. Intra.* 561. *B. Sell.* 1. 565. *C. Sell.* 1, 2. 19 *Edw.* 3. *Aid* 28. for that disaffirms the Replevin, viz. the supposal of the Wagon.

distrained, but out of a Wagon they cannot, 2 wagon.
Hen. 4. 15. *pl.* 17. 41 *Edw.* 3. *Distress* 14. 22
Edw. 4. 50. 11 *Hen.* 7. 14. *pl.* 8. 21 *Hen.* 7.
39. *pl.* 55. because there can be no Return, nei-
ther doth a Replevin lie of them. 2. It seems be-
cause Cattel of the Trough are not distrainable, so
they shall be adjudged if they be loose; but when
they are in the Wagon, it is known they are for
other use.

A a

The

29 *Edw.* 3. 16. else not in respect of the hindrance of clothing.

Plough.

Cattel of the Plough shall not be distrained, if there be other distress sufficient, 14 *Eliz.* *Dyer.* 312. *pl.* 86. else they may; for otherwise the party may be without remedy.

Cattel in Dower.

Cattel delivered by the Sheriff to the Tenant in Dower for seisin of Rent shall not be distrained for Arrerages of the Rent, 40 *Edw.* 3. 22. *pl.* 19. For she shall not take such advantage.

Yarn.

Yarn brought upon a Horse to a Neighbour to weigh, this the Lord cannot distrain for Rent, because it was brought for a special intent, *Mich.* 39 & 40 *Eliz. com. Ban. Burleigh* versus *Read.* and it would hinder publick commerce and dealing.

Cattel.

If Cattel put into Black Acre, and they stray into White Acre, through default of enclosure, they shall not be distrained, 22 *Eliz.* *Dyer* 365. *pl.* 33. For the Owner is in no fault.

Default of Inclosure.

A. ought to inclose against B, and leases to C, for 21 years, which leases to D, for 10 years, rendring Rent, the Cattel of B, for default of enclosure, escape into the Lands of A, and he pursues them; C cannot distrain, for no default was in the owner of the Cattel, 15 *Eliz.* *Dyer* 317. *pl.* 9. *vide* 39 *Edw.* 3. 3. *pl.* 12. and the Law doth not punish the innocent.

What

What Person shall distrain.

A Commoner shall distrain for damage feasant, Damage and is not tied to shew *per quod amisit Communi-* feasant.
am, No. Lib. intra. 573. D. sect. 4. 24 Edw. 3.

42. pl. 23. Coke 9. part. 112. B. 46 Edw. 3. 23.

15 Hen. 7. 2. 7 Edw. 3. 266. pl. 39. 13. Hen. 8.

15. For the Distress there taken implies it.

Tenant at sufferance distrains, damages feasant. *4 Hen. 7. 3.* and good; for he hath title against a stranger.

He to whose use before, *27 Hen. 8.* could not distrain, because he had nothing in the Land, *15 Hen. 7. 2. pl. 4.* but the Feoffee of the Land; but now it is otherwise.

Sheep bailed to a woman sole to dung her Land, Sheep, who takes a Husband, who commands the Owner to take them again, who refuseth, the Husband may distrain them, damage feasant, *43 Edw. 3. 32. pl. 3.* For now they are damage feasant unto him in respect of his interest in the Land.

The Lord distrains Cattel, because the Tenant puts in more than he ought into the Common, *46 Edw. 3. 12. pl. 13.* and good, for he ought not to surcharge the Common. Lord.

A. sold 50 Acres of Moor which lay common, Common. to B, yet every one of them ought to inclose against the other, and if the Cattel of the one go into the Land of the other, they shall be distrained, damage feasant, *23 Eliz. Dyer 372. pl. 10.* For by the sale the Lands are severed.

At what time a man may distrain.

Services
and A-
merciam-
ents.

For Rent-services he shall not distrain in the night, 11 *Hen.* 7. 5. *pl.* 8. 12 *Edw.* 3. Distress 17. 10 *Edw.* 3. 21. *Coke* 9. *part.* 66. *A.* For the night is for rest, and all things ought to be then in peace.

After the Term ended no distress, 14 *Hen.* 4. 31. For then the privity betwixt the Lessor and the Lessee is gone. *Q.*

But 22 *Hen.* 7. 96. *pl.* 5. by all, if a Lease for years be ended, and the Lessee keeps in, the Lessor shall distrain for the arrearages. For that continues the privity as it seems. *Q.*

A Lease till *Mich.* for one year, rendring rent at *Mich.* he cannot distrain, because the Lease is ended at the instant, *Doll. & Stud.* 74. *A.* That is, at the day, and the Law admits not of Fractions of time.

Husband
and wife.

Husband leases the Wifes Lands, rendring Rent, th Wife dies without Issue, the Husband cannot distrain, because the reversion goes to the Heir, 9 *Hen.* 6. 45. 28 *Hen.* 8. *Dyer* 28. *pl.* 191. And the rent go with the Reversion.

Reversion.

A Lease for years, & grants the reversion to B, yet if the Cattel of B comes upon the Land, A shall distrain during the Term, 10 *Edw.* 4. 4. *ta-men quere*, because he hath nothing in the Land.

Damnage
feasant.

For Damnage feasant in the night, one may distrain, and good enough, *Coke* 9. *part.* 66. *A.* *Mackally's* case. 11 *Hen.* 7. 5. *pl.* 8. 12 *Edw.* 3. Distress 17. 10 *Edw.* 3. 21. For else it might be mis-

mischievous in respect of the dammages which might be done before the morning.

A. enters upon a condition broken, and takes the Cattel of the Lessee, damage feasant, *Quere.* 5 *Eliz. Dyer* 322. It seems he may; for he comes in upon a good Title.

A man may distrain damage feasant, although the owner make fresh suit, in respect of his satisfaction for the damage done, 7 *Hen. 7. 1. pl. 11.* 11 *Hen. 7. 4. pl. 11.* 10. *Hen. 7. 21. Doñ. & Stud. 15. & contra.*

In what place a man may distrain.

A man fined in a Leet, being one of the Deziners, shall be distrained through all the jurisdiction of the Leet, although that he be of another dezin, *Coke 11. part. 45. A. 11 Hen. 4. 89. 13 Hen. 4. 9.* For he may, it seems, be liable in both places. Leet.

A man shall distrain in any place within the precinct of the Court, 19 *Edw. 3. 2. Avowry 225. 8 Rich. 2. Avowry 194. 47 Edw. 3. pl. 12.* where the Amerciament is set, but not without; for there is no jurisdiction. Tourné of the Sheriff

For Amerciament in the Sheriffs Tourne he may distrain throughout the County, 12 *Hen. 4. 24. pl. 17.* 13 *Hen. 4. 9. 8. Rich. 2. Avowry 194.* because all the County is within the jurisdiction of the Sheriffs turn; for it is the County-Court.

If a man had a Leet within his Mannor, he cannot distrain out of his Mannor, 4 *Edw. 3. 96. pl. 26.* For that is not within his jurisdiction.

For a Tax by the Parliament, a distress may be

A a 4

justified

For a tax by the Parliament

justified throughout all the Village, 11 *Hen.* 4. 2. 18 *Edw.* 3. 11. *pl.* 39. upon which the Tax is set. This was according to the old way; butnow the Law is altered.

For Service.

A Fishing lying within tenure, a man may distrain in it, for it seems that the Soil passeth, 40 *Edw.* 3. 45. as well as the water, viz. *terra aqua cooperta*. ℞ For a Fishing seems but a Liberty or Priviledge.

Herriot-service.

A man may seize his Herriot-service in any place that he shall find him, although not within his Fee, 6 *Edw.* 3. 208. *pl.* 3. For it is a personal service, and not local or fixt.

House.

The Lord may enter the House of his Tenant to distrain if the Door be open, 38 *Hen.* 6. 26 *pl.* 4. But he cannot open the Door to do it. ℞

If the Lord find the House fast with a Bar, and he break it open and distrain, this is wrongfully done, 8 *Edw.* 2. Distress 21. For a mans House is his Castle of defence.

Estranger.

If the Beasts of a stranger escape into anothers Land, and the Owner chases them out before, and the Lord comes and distrains them, here the Lord cannot distrain them; yet it is otherwise, if they go out of their own accord, without chating, 11 *Hen.* 7. 4. *pl.* 11 *Com.* 38. *A. Plats* case. 2 *Edw.* 4. 6. *B. Littleton.* 33 *Hen.* 6. 52. *pl.* 39. 34 *Hen.* 6. 18. *B.* For in the former case he may take notice of the Owner, but in the latter case he cannot.

Glebe.

The Lord distrains the Cattell of the Patron within the Glebe belonging to the Advowson, 33 *Hen.* 6. 35. *Littleton.* This is a good distress held.

Lessee.

A man cannot distrain for Rent but in the place leased, unless the Lessee grant a distress in other Land,

Land, 9 *Hen. 6. 9.* which he may well do by special agreement.

The Lord distrains in his Fee, the Tenant Lords Fee. chases them out of his Fee, he may take them again, 44 *Edw. 3. 20. pl. 18.* for by the distress he had a property.

A Bailly attaches a Horse, which is rescued and Fresh suit. brought into another County, he shall make fresh suit, and take him again, 33 *Hen. 6. 52. pl. 39.* 33 *Hen. 6. 550. pl. 46.* else not; for the gaining him upon the fresh suit re-continues the Attachment.

A distrains and puts them in the pound, the Pound. Owner takes them out, A may take them again in any place, 34 *Hen. 6. 18. pl. 33.* because they were once in custody of the Law, and he may place them there again wherever he finds them.

If one put his Cattel in Land charged with a Rent-charge, they shall be distrained for the Rent-charge, although they are neither Levant nor Couchant: otherwise, if they escape upon the Land, 15 *Hen. 7. 17. pl. 13.* for it shall be presumed he took notice of the Rent; but not so where the Beasts escape there, for that is against his will, and he could not help it.

Quere by the 18 *Edw. 2. Avowry 219.* if the Cattel that escape shall not be distrained for damage feasant. It seems they shall, in respect of the damage to be recompenced, which come by his negligence.

2 & 3 *Marie Dyer 117. pl. 73.* Distress for an annual sum upon the River of *Thames.* 2. of *Thames.* what nature.

What

*What Distress shall be sold.*Court-
Leet.

A Distress taken in a Court-Leet shall be sold, although that a common person be Lord of the Leet, 3 Hen. 7. 4. pl. 15. Fairfax.

Inmate.

Distress taken by a Bailiff of a Lord of a Leet for forfeiture of Inmates, and sold by force of a grant of the Steward in nature of a *Scire facias*, No. Lib. Intra 666. A. Sect. 14. Q. whether by the Common Law.

Highways.

A Distress taken for a Fine touching Highways shall be sold, per 18 Eliz. cap. 10.

What shall not be said a Distress excessive.

Excessive.

No Distress shall be said excessive for Homage, 42 Edw. 3. 26. pl. 11. Belknap, 27. Affize pl. 51. Coke 4. part. 8. B. Bevil's case, 28. Affize pl. 50. this is in respect of the great consequence of the thing distrained for, and the easiness for the Tenant to perform it.

So likewise for fealty, 27. Affize, pl. 51. 28. Affize, pl. 50. Coke 4. part. 8. Bevil's case, for the same reason, and in respect of the contempt done to the Lord.

A man distrains four Horses and a Cart for two shillings rent; this is not excessive, because they are fixed to the Cart; otherwise, if not fixed: so of a fold of Sheep, 20 Edw. 4. 3. otherwise, if not in the fold. *Quere rationem differentie*. It seems to be, because in the former cases the intent of the party appears, but only to have his due, and not to take advantage of the Distress: But not

so in the latter, for then he might have distrained one Horse, or one Sheep.

1. The Barr. 2. Justification. 3. Conscience.
4. Avowry.

No Barr that the Plaintiff is possessed of the Cattel, *Nat. br. 69. H.* for he ought to have damages for the wrongful distraining of them. 1. Barr.

That he took them not, a good barr, *Lib. Intra. 561. B. Sec. 1. 565. C. Sec. 1, 2. 19 Edw. 3. Asd 28.* for that disaffirms the Replevin, *viz.* the supposal of the Writ.

Claim of Property, *26 Hen. 8. 6. pl. 27. 31 Hen. 6. 12.* for then it was lawful to take them as his own.

This may not be by way of Avowry, *31 Hen. 6. 12.*

In Replevin of grain it is a good Barr to say. *Grain.* it was his Wifes *dum sola*, and that the Plaintiff surrendered it to her, *30 Edw. 3. 9. pl. 3.* for by the marriage the interest is his.

When a man cannot have the thing for which he distrains, then he may justify the taking in lieu of the thing, and not avow to keep it till he have the thing it self, *per Curiam, 19 Hen. 6. 41. pl. 83.* 2. Justification.
Difference between a Justification and an Avowry.

But *22 Edw. 4. 36. B. è contra, Collo. Q.*

If a man distrain for Services, and the Tenant die, in *Repleg.* brought by the Executors, he shall justify, but not avow, *17 Edw. 3. Executors 106.* for he can make no title against them, but he may justify the taking.

Because

Because he cannot have a return for the same thing against the Executors, 22 *Edm.* 4. 36. B. *Collow.*

If a man distrain for Services, he may justifie or avow at his Election, 15 *Edm.* 4. 29.

In every case where he may avow, he may justifie, for he hath done no wrong: *sed non è contra*, 5 *Edm.* 4. 6. *Young*; for he may have done no wrong in taking, and yet may not be able to maintain an Avowry.

A man may justifie for Rent determined, but not avow, *viz.* for Rent arrear before it was determined, *Mich.* 33 & 34 *Eliz. Com. Ban. Goddards* case, because he cannot make a Title.

Tenant at sufferance may justifie a distress for damage feasant, 4 *Hen.* 7. 3. *pl.* 6. for he hath a Title against a Stranger.

One makes Conusance of the distress for damage feasant in the Frank-tenant of his Master, 10 & 11 *Eliz. Dyer* 280. *pl.* 15. 21 *Eliz. Dyer* 365. *pl.* 32. and good in the behalf of his Master.

Conusance as Bailly of *A*, and that he took them damage feasant in the Land that his Master had for years, 2 & 3 *Marie Dyer* 117. *pl.* 76. and good.

Conusance as Bailly to the Parson of *D*, which claims a Rent by prescription, and a distress for it, and good, *Lib. Intra.* 557. *Charge* 1.

He cannot avow for Rent determined, but may justifie, *Mich.* 33 & 34 *Eliz. Com. Ban. Goddards* case, *antea*; because his Title to the Rent is gone.

Quotuplex.

1. Avowries for Rent-services are twofold,
1. per

1. *per* Common Law; and 2. by Statute Law, *Coke 9. part. 134. B. Ascoughs case.*

2. One may avow upon one, as upon his veray Tenant by the manner, *scil.* when the Tenant leased it for life, or made a gift in Tail, the remainder over in Fee, 20 *Hen. 6. 9. B.* for he is not bound to take notice of such a lease or gift.

But then the Lord ought to shew this special matter in his Avowry, 15 *Edm. 4. 12. A. Catesby*, vide 4 *Hen. 6. 14. pl. 11. Quere.*

3. Upon one as his Tenant by the manner, when the Lord hath but an estate in Tail, or a lesser estate in the Lordship, or when the Tenant hath a lesser estate than Fee-simple; for neither of these hinders him from being Tenant, 21 *Hen. 6. 22. pl. 2.* 2 *Hen 4. 24. pl. 13. Haukeford.*

4. Upon the matter in the Land generally, as being within his fee and Signory, 38 *Hen. 6. 23. pl. 7.*

5. Upon the Land by any Lord generally, *per* 21 *Hen. 8. cap. 19.* as in Land within his Fee and Signory, without making Avowry upon any person certain, *Coke 9. part. 136. Ascoughs case*; for the Avowry is in respect of the Lands held, and not of the person.

Who shall avow.

An Administrator shall avow for Rent due in Admini- the life of the Intestate, *per* 32 *Hen. 8.* for he strator. comes in the place of the Intestate in respect of interest.

Husband and Wife in right of the wife, for Husband Rent-services due for Land held of the wife, *Lib. and Wife. Intra, 555. D. Sect. 6.* for the Husband hath the present

present interest, and by his death the wifes interest returns.

Or for Rent due to the wife afore Coverture, 4 *Hen. 6.* 13. for by the Coverture the Rent belongs to the husband.

But one cannot make Conufance as Bailly to the husband and wife, because a Feme covert cannot make a Bailly, 13 *Hen. 4.* *Avowry* 198. Q. how the Bailly of Lands held by the husband in right of the wife shall avow? It seems as Bailly to the husband only.

He to
whose use.

He to whose use before, 27 *Hen. 8.* cannot avow for damage feasant in his own name, because he hath nothing in the Land at Common Law, but occupation at sufferance of the Feoffees, 15 *Hen. 7. 2. pl. 4. fol. 12. pl. 23. fol. 13. pl. 1. Croke* 17 *Hen. 7. 41. pl. 2. antea.*

But may justifie in the names of the Feoffees, *Croke* 17 *Hen. 4. pl. 7.* by their leave, as it seems.

Commoner.

A Commoner may avow for damage feasant, *Coke* 9 *part. 112. B. 24 Edw. 3. 42. pl. 23. 40 Edw. 3. 23. 15 Hen. 7. 8. 13 Hen. 8. 15. 7 Edw. 3. 266. pl. 39. Coke* 8. *part. 78. B. Welds case, Croke* 17 *Hen. 7. 41. pl. 2. antea,* in respect of his interest.

Although he be Copyholder or Tenant for years, *Coke* 9. *part. 112. B.* for he hath interest in the Common in respect of such estate.

And needs not shew *per quod amisit communiam*, for it shall be intended so, *No. Lib. Intr.* 573. *D. Sect. 4.* but *vide* *Coke* 9. *part. 113. A.* who ought to shew it; for in some cases it must be so specially pleaded.

For.

For Rent reserved by the Testator upon a Lease for years in the avowry by the Executor, he shall not be put to shew the Testament, 12 Rich.2.163. for the other may traverse that he is not Executor, if it be so.

An Executor may avow for Rent due *in vita* Executor. Testatoris, by the Statute of 32 Hen. 8. cap.37.

If a Rent be granted to husband and wife, Woman. Arrearages incur, the husband dies, the wife shall distrain for the Arrearages, 29 Edw. 3. 40. pl.19. for the Rent is now due to her by Survivorship.

Gardein in Soccage may avow for damage Gardein in Soccage. feasant in his own name, for he hath the Governance of the Land, Crooke 17 Hen.7.48.B. Fromiek, and so the wrong is, as it were, done to him, and he is to account for the profits of the Land.

A Parson may avow for a Rent-charge by prescription, Lib. Intra. 557. B. sect. 1. Antea. Parson.

The King having the profits of Land by Outlawry in a personal action, may avow for the Rent, King. 15 Hen. 7. 2. pl. 4. for it belongs to him in right of the outlawed person.

Tenant at will for damage feasant, Lib. Intra. Tenant at will. 561.B. Sect.1. 15 Hen. 7.2. pl. 4. may avow for the damage done to him.

Tenant at sufferance cannot avow for damage Tenant at sufferance. feasant, for he can make no Title, Crooke 17 Hen.7. 47.A. But vide 4 Hen.7.3. pl.6. in Trespass he justifies for damage feasant, and good; for he ought to have the profits, till he that hath right enter upon him, and the distress is to recover amends for the profits taken from him.

For

For what things a man may avow.

1. Amerci-
ament. For an Amerciament in a Leet, *No. Lib. Intra.*
572. *A. Secl. 2. Crooke 20 Hen. 7. 66. pl. 8.*

2. In the Tourn of the Sheriff, 28 *Edw. 3. 95.*

3. In a Court Baron it was by custome alledged,
15 *Eliz. Dyer 322. pl. 23. Crooke 20 Hen. 7. 66.*
pl. 8. for Amerciament for the Tenants not com-
ing to the Court he may distrain, if it be assessed
by Afferrors, otherwise not, *viz. the Lord.*

Corrody. For a Corrody granted with a distress, if not
paid, he may avow for a distress for it, 27 *Edw. 3.*
81. *pl. 13.*

Dammage
feasant. For dammage feasant, *Lib. Intra. 554. D. Secl. 3.*
556. *A. Secl. 7. 559. A. Secl. 1, 2. No. Lib. Intra.*
575. *B. Secl. 6. 577. C. Coke 8. part. 89. B. Frances*
case. Antea.

If the Cattel be chased out of the Land before
he distrain, he cannot avow the distress, *Coke 9.*
part. 22. Avowry, 16 Edw. 4. 10. 2 Edw. 3. 2.
Avowry 182. for they must be taken in the ground
or Land.

A man pleads it is his Franktenant, and avows
for dammage feasant, and it was found that it was
his Franktenant, and his wifes; the Judgment
shall be against him, for both were seized, and so
the plea false, *Trin. 38 Eliz. Com. Ban. Walker*
versus Bonner.

The Plaintiff shews that *A* was seized, and the
Land descended to him, and that he was seized in
Fee, and avows for dammage feasant, and good,
Trin. 9 Jac. Newton versus Ausley; for here is a
good Title derived.

For

For a Moiety of the value of the Land, upon Forfeiture
4 Hen. 7. forfeited.

For maintenance of Husbandry, *Lib. Intra.*
575. D. *Señ. 1.*

For a Herriot custome, *No. Lib. 613. B. Señ. 22.* Herriot:

But he ought to shew the certainty of the Land holden, for to say that he held two Tenements is not sufficient; but if he claims it of the Lessee for life, he ought to shew which Lease he holds by,
21 Hen. 7. 79. pl. 27. Crooke.

For Relief, *Lib. Intra. 555. C. Señ. 4.* Relief:

But the Avowry shall not be for the double rent, but only the quantity of the single rent,
16 Hen. 7. 4. pl. 2.

1. For a Rent-charge, *No. Lib. Intra. 585. A.* Rent:
Señ. 7, 8, 9. by deed.

2. For a Rent-charge by prescription, *Lib. Intra.*
557. B. *Señ. 1, & 2. C.*

3. For Rent-service; but if he avow for two rents, where one Rent-day is not come, the Avowry shall abate, for that only which is not come, *Coke 8. part. 45. B. Godfreys case*; but for the other it is good, because due.

1. For Fealty, *Lib. Intra. 555. C. Señ. 4.*

2. For Homage, *Lib. Intra. 555. C. Señ. 4. Coke*
4. part. 6. A. & B. *Bevils case.* Services:

For Rent-service, *Lib. Intra. 554. C. Señ. 2. 556.*
Señ. 8.

But if it be to render one thing or other, as a Rose, or a pair of Spurs, and shew for what he avows, he shall avow accordingly.

For *Braddon lib. 2. fol. 35. B. in hoc casu tenens habet electionem, & unum solvendo liberatur ab altero.*

For Rent-service, when the Cattel are chased out, *Lib. Intr.* 557. *A. Seil.* 10. *antea.*

Seisin in Avowry in whom it may be alledged.

Ancestor. It may be alledged in the Ancestor of the Avowant, 34 *Hen.* 6. 21. 3 *Edw.* 2. *Avowry* 187. 20 *Hen.* 6. 7. *com.* 140. *A.* 16 *Hen.* 7. 4. *pl.* 10. 2 *Edw.* 3. 27. *pl.* 4. because he derives his Title from him.

Feoffor. In the Father of the Feoffor, *Lib. Intra.* 556. *B. seil.* 8. and so the Feoffor had a good Title by presumption.

Predecessor. In the Predecessor good, 6 *Edw.* 3. 277. *Com.* 96. *A.* under whom he claims.

By what hands Seisin of the Rent or Services shall be alledged.

Ancestor. By the Ancestor of the Plaintiff, 34 *Edw.* 3. *Avowry* 258. 34 *Hen.* 6. 8. who was possessed of the Land.

Disseisor. By a Disseisor, good, *Coke* 2. *part.* 67. *A. Tookers* case, *Coke* 6. *part.* 57. *B. Bredimans* case; for he was owner *pro tempore.*

Unless it be by Covin, *Coke* 6. *part.* 58. *A. Bredimans* case, betwixt him and he that distrains; for the Law protects not fraud.

Infant. By the hands of an Infant, good, 34 *Edw.* 3. *Disclaimers* 30. *Coke* 9. *part.* 33. *B. Bucknals* case. *Quere.*

Feoffor of the Tenant. In the Feoffor of the Tenant, *Com.* 95. *A. Mantels* case; for the Tenant derives under him.

By

By the hands of one Joyntenant only, it is good, *Joynt-tenant.*
Coke 2. part. 67. A. Tookers case.

Prescription to have rent of a Village, Scisin by *Reliants.*
 the Reliants is good, because all the Village is
 chargeable, *4 Hen. 6. 29, 30. Coke. 6. part. 59. Bredimans case.*

By Tenant for years, not good, because he *Tenant.*
 hath not an estate out of which scisin may be
 gained, *Coke 6. part. 57. A. Bredimans case*, in
 respect of the feebleness of it.

By the hands of the Tenant for life, good,
 when the remainder is over to another, *Coke 6.*
part. 58. A. Bredimans case; for he hath a Free-
 hold.

By the hands of the Tenant by the Courtlesie,
 not good to charge the Heir with a Herriot-ser-
 vice, because none may have his estate, *21 Hen. 7.*
84. pl. 8. Croke, nor derive a Title from him;
 for his estate determines with his life.

A Tenant to a Lord makes a Feoffment, and
 after notice to the Lord gives scisin to the Lord;
 this is good, because he remains Tenant to the
 Lord until notice be given, *Coke 6. part. 58. A.*
Bredimans case; for the Lord cannot take notice
 of the Feoffment.

By the hands of the Tenant, and needs not say
 Tenant of the land, *34 Hen. 6. 8.* for it shall be so
 intended.

By the hands of the Tenant peravail, good,
Coke 6. part. 58. A. Bredimans case, or Under-
 tenant.

The Sheriff claims a rent by prescription and
 scisin, *42 Edw. 3. 4.*

Within what time seisin ought to be alledged.

The Advowant is not bound to alledge seisin within 40 years, but may alledge it generally, and then the other may plead that he was not seised within 40 years, *Coke 8. part. 65. A. Fosters case, 9. part. 36. A. Bucknalls case, 14 Eliz. Dyer 315. pl. 10.* and that will destroy the seisin, if it be so.

When it is not requisite to alledge Seisin.

Avowry. In an Avowry for an amerciamient it is not requisite to alledge it, *11 Hen. 4. 89. 13 Hen. 4. 9.*

In an Avowry for a Rent-charge, *44 Edw. 3. Avowry 75. Coke 8. part. 56. A. Fosters case,* it is necessary; for if he were never seised the rent was not executed.

In an Avowry for rent upon a feoffment by deed Seisin is not necessary to be alledged, because the deed is the Title, and the commencement of it appears by it, *2 Edw. 2. Avowry 185. Coke 8. part. 65. A. Fosters case.*

So for Rent or Service upon a gift in Tail, or other particular estate, *Coke 8. part. 65. A. Fosters case,* created by deed.

What Seisin shall be good.

Superiour. Seisin of the superiour Service is seisin of all inferiours, because they are incident to it, *Coke 4. part. 8. Bevils case,* and included as it were in it.

For Example, seisin of Escuage is seisin of Homage, *Coke 4. part. 8.*

Seisin

Seisin of Homage is seisin of Fealty, *Coke 4. part. 8.*

Seisin of Homage is seisin of the Superiour or Inferiour.

For Example, seisin of Homage is seisin of Escuage the superiour, 13 *Edw. 4. 5.* and is seisin of Relief, the inferiour service, 13 *Edw. 4. 5.*

Seisin of Fealty is seisin of all, because he takes an Oath to do all, *Coke 4. part. 8. A. Bevills case, 44 Edw. 3. 11. 8 Hen. 5. 16.*

Seisin of Annual service is seisin of every Casual service, *Coke 4. part. 8. 9. Bevills case, 20 Edw. 3. 11. 76. B. Avowry 69.* for the certain comprehends the incertain. Annual.

Seisin of rent is seisin of fealty, 29 *Edw. 3. 21. A. 3 Edw. 2. Avowry 188.* for fealty is incident unto it.

Seisin of one Annual service is not seisin of another Annual service, because it is the folly of the Lord that he did not obtain that which is annual, *Coke 4. part. 9. A. Bevills case, 16 Eliz. Dyer 330. 2.*

Reservation the former year one Rose, and afterwards 20 s. *per annum*, the seisin of the one gives the seisin of the other, *Coke 4. part. 9. Bevills case*; for they depend one upon another, and hang together like links of a Chain.

The Lord recovers dammage for Suit; this is a good seisin of the Suit, *Coke 4. part. A. Bevills case*; for the dammage comes in room of the suit, and shew it was due.

Note that a seisin in Law is sufficient seisin within the Statute of 35 *Hen. 8. cap. 2. 1.* because the intent of the makers was to limit the time,

and not to exclude any seisin that was at Common Law; 2. the words being (possession or seisin) in the disjunctive, make an actual seisin, which refers to the three former branches, and seisin; this is either actual or in Law, which refers to the fourth branch, *Coke 4. part. 10. Bevil's case.*

Ancient
seisin.

Measnalty extinct by purchase of the Tenant, the old seisin doth suffice for a Rent-seck, *Coke 4. part. 9. A. 2 Edw. 2. Extinguish 6.*

A Signory granted upon condition which is broken the ancient seisin sufficeth, for the distress is in lieu of the entry, *Coke 4. part. 9. B. Bevil's case*; for he cannot distrain except he enter.

Barr to an Avowry.

Amends.

Tender of amends for dammage feasant before distress, or impounding is good; but not afterward, *Coke 5. part. 76. A. 8. part. 147. A. Doct. & Stud. 112. B. Nat. br. 69. G.* because then the party is put to more loss and trouble.

If there be tender of amends after distress, and afore impounding, the detainer is wrongful and not the distress, *Coke 8. part. 147. A. Carpenters case.* Q. for it seems the detainer is not wrongful, except he tender amends as well for his trouble and expences, as for the dammage done by the Cattel.

The tender of amends to the Bailly is not good, *Coke 5. part. 76. A. Pilkingtons case, 1 Hen. 4. 15. pl. 17.* for he hath not power to take it, for this belongs not to him as a Bailly.

Common.

A claims Common appurtenant to such a house *pro omnibus averiis magnis*, and a verdict given for

for him; and it was resolved after verdict, that although he doth not say (*suus*) it is good; 2. although he said not Common appurtenant, *Pasch. 15. Jac. Ban. Regis*, for both shall be so intended.

Disclaimer is a good bar, *Coke 9. part. 34. Bucknalls case, 15 Rich. 2. Avowry 214. viz.* that the party who distrained did disclaim.

Disclaimer

Avowry, because *A* seised in fee granted a rent to the Avowant, for which he distrains, the other pleads that *A* was seised in t^r; this is not good, if he traverse not the seisin in fee, 11 *Eliz. Dyer 280. pl. 16.* for he might be seised also in fee in remainder.

Grapt by
Tenant in
tail.

Out of his fee is a good Barr, and every Stranger to the Avowry shall plead it, *Coke 9. part. 20. A. 34. 15 Rich. 2. Avowry*; for then the party cannot distrain there.

Out of his
Fee.

Note, *Feodum dum homagium, & servitium, & non tenementum in dominico*, *Bracton lib. 2. fol. 46. B. Q. I* suppose the meaning is, that there is fee, wheresoever homage or services are due.

Note.

If one avow, the other need not say he took them in the high Street, but is put to his Action upon the Statute, 11 *Rich. 2. Avowry 87.* which hinders the taking of such distresses.

In an Avowry for an Amerciament assented in Court Baron *de injuria sua propria*, is a good barr, for the Custome is traversed by that plea, *Mich. 13 Jac. Com. Ban. Baker & Banks.*

Injuria sua
propria.

The Plaintiff says, that the Defendant ought to have inclosed, and did not do it sufficiently; *vide* the pleadings, 22 *Eliz. Dyer 365. pl. 32.* and that which is not sufficiently done is, as if it were not done at all,

Ought to
inclose and
did not.

Coparcener.

Consuſance for damage feaſant, the other ſaid that they are Coparceners; this is good, 10 & 11 *Eliz.* *Dyer* 280. *pl.* 15. for he is ſeized *per my & per tout* in all the Land, and therefore cannot be a Trespaſſer.

Nothing in arrear.

Nothing in arrear a good barr; but no Stranger ſhall plead it, *Coke* 9. *part.* 20. *A.* viz. upon a diſtreſs for rent or ſervices.

Release.

A releaſe of Actions perſonals and reals pleaded in barr of the Avowry for a corrody granted with a diſtreſs, a good barr, 27 *Edw.* 3. 81. *pl.* 13. for the diſtreſs is in the nature of an Action.

Seiſin.

When the Lord varies from the truth of the quantity of his ſervices by reaſon of ſeiſin, there the Defendant cannot traverse the ſeiſin, *Coke* 9. *part.* 33. *A.* *Com.* 94. *B.* *Mantels* caſe, for the variance deſtroys not the ſeiſin.

But if they differ of the quantity by reaſon of ſeiſin had, there the ſeiſin is traversable, *Coke* 9. *part.* 33. *A.* *Bucknals* caſe, *Com.* 94. *B.* *Mantels* caſe, 18 *Edw.* 2. *Avowry* 217. for the ſeiſin is the chief thing in queſtion.

Not ſeiſed.

Not ſeiſed generally is a good barr, for by this he ſhall have no remedy of the Lord, *Coke* 9. *part.* 34. *B.* *Bucknals* caſe, 22 *Hen.* 6. 3. *A.* 30 *Hen.* 6. *Avowry* 15. but he ſhall only retain the diſtreſs. 2. for he ſhall have damages.

But if the Lord avow and alledge ſeiſin by the hands of the Plaintiff or other perſon, the Plaintiff ſhall ſay, never ſeiſed by his hands, *Coke* 9. *part.* 35. *A.* *Bucknals* caſe, 22 *Hen.* 6. 3. *A.* and this is a good barr, for here is a good iſſue tendered.

The

The seisin is not traversable, but for that only for which the Avowry is made, *Coke 9 part. 35. A. Bucknals case, 26 Hen. 8. 1. pl. 1.* unless seisin be alledged of a superiour service, as if tenure be alledged *per* Homage, fealty, and rent, and the Avowry is for rent, and seisin is alledged in all, the seisin of the rent is only traversable, *Coke 9. part. 34. A.* because the Avowry is only for the rent.

But if it be of Homage, Fealty, Rent, and Escuage, and the Avowry is for Homage, and he alledgeth seisin in all, there the seisin of Escuage is traversable, because this is seisin of all, *Coke 9. part. 34. A. Bucknals case, 21 Edw. 3. 52. 13 Edw. 3. Avowry 103. 19 Edw. 2. Avowry 224. 16 Edw. 4. 11. pl. 11.* for Escuage includes all the rest.

Tenure by Homage, Fealty, or Escuage, or Suit of Court and other services, and seisin is alledged of all, he may traverse the seisin of Homage and Escuage, *2 Edw. 3. 21. pl. 4.* because they include the rest.

Not seised within 40 years is a good barr, *32 Hen. 8. cap. 2. Coke 9. part. 36. Bucknals case, 14 Eliz. Dyer 315. pl. 101.* for it is not likely; if he had any right, there would have been no seisin in so long time.

Not seised within 40 years.

But he that pleads this, ought first to confess a tenure, to the intent that the Lord may have a Writ of Customes and Services, *15 Ric. 2. Avowry 214. Coke 9. part. 34. B. Bucknals case.* It seems the pleading so doth impliedly confess a tenure, or at least doth not deny it.

But

But this is no plea in an Avowry for rent upon a grant or reservation by deed, because the deed makes the Title, *Coke 8. part. 65. A. Fosters case*, and not the seisin.

Or upon a gift in Tail, because the commencement of the Estate is within the time of memory, *Coke 8. part. 64. A. Fosters case, 4. part. 11. A. Bevills case*,

Or if it be for casual services, as homage, fealty, or to go to war, because perchance it may not happen within 40 years, *Coke 4. part. 10. 11. Bevills case*, and so there could be no seisin of it.

So if the Lord release to the Tenant so long as *A* hath heirs of his body, because *A* may have heirs a long time after, *Coke 4. part. 11. A. Bevills case*.

So if Land be conveyed to a Major and Commonality, which was held by homage and fealty, which conveys this over; this is no plea, because the Major and Commonalty cannot do homage or fealty, *Coke 4. part. 11. A. Bevills case*; for that must be done by one single person, and not by a body politick consisting of multitudes.

Seisin avoided in Avowry.

Note, 1. The Issue in tail shall avoid seisin by the hands of the Tenant in tail, *Coke 9. part. 34. A. Bucknalls case, 34 Edw. 3. Avowry 131.* for he comes in by the Donor.

But this is intended when the Tenant of the Lord makes a gift in Tail, the remainder in Fee; for the Tenant in tail shall himself avoid the encroachment and seisin made between by the Donor, because he ought to shew the commencement of the reservation, *Coke 8. part. 65. A. Fosters case, 10. part. 108. Lofields case*.

2. Suc-

2. Successor of a Bishop shall avoid seisin between by the hands of the predecessor, *Coke 9. part. 34. A.* for the predecessors act shall not bind him.

3. Veray Tenant of the land, if he have deed and shew the contrary, *Coke 9. part. 34. A.* 10 *Hen. 7. 11. Nat. br. 163. C.* 12 *Hen. 6. 5.* 4 *Edw. 2. Avowry 201, 202.* shall avoid seisin.

4. Encroachment of seisin is not material, where is no tenure, *Coke 9. part. 34. B. Bucknalls case;* for the tenure is the ground of the seisin.

5. Such seisin shall be avoided, because it was by coercion of distress, *Coke 9. part. 34. B. Bucknalls case,* 12 *Edw. 4. 7. pl. 18.* 8 *Hen. 6. 18. pl. 1.* 47 *Edw. 3. 4. pl. 8.* and not voluntarily rendred, it is in the nature of a thing obtained by Duress.

6. If rent be payable at one day in a year, and the Lord encroacheth seisin upon two days of the year; this being involuntary, yet shall be avoided in an Avowry for this, that they agree in the Annual sum, *Coke 9. part. 34. B. Bucknalls case,* vide 21 *Edw. 4. 64. pl. 36, & fol. 84. pl. 39;* and the time is only in question, and the Lord is not lessened in the rent.

Tenure.

In an Avowry the seisin is traversable, and not the tenure, *Crooke 13 Hen. 7. 31. B.* for without seisin the Avowry is not issuable.

1. When the Lord varies in avowing of the verity of the quantity of the services by colour of seisin, the tenure shall be traversed, *Coke 9. part. 33. A. Bucknalls case,* 10 *Hen. 7. 11. pl. 31.* *Com 94. Mantels case,* *Crooke 13 Hen. 7. 31. B.* viz. he may say, that he holds not by so much rent, or so many services.

But

But then the Tenant ought to confess the Tenure in part, for he needs not traverse all the tenure, as to say that he holds not of him; but he may disclaim or plead out of his fee, *Coke 9. part. 35. A. Bucknals case, 10 Hen. 6. 6, 7. pl. 20. 37 Hen. 6. 25. pl. 13. 15. Rich. 2. Avowry 214. as to part.*

But note 11 *Hen. 4. 10. pl. 22.* the Tenant said, that the Avowant did give the Lordship to *A* in fail, the remainder to *B* in tail, and that *A* died without issue, *B* yet living; there he needs not suffer a Disclaimer, or plead out of his fee, but there *fol. 7. pl. 40.* he had judgment of the Avowry, and admitted good.

2. When they agree in the quantity of the Services, and vary in the quantity of the Land; there the Plaintiff may traverse *absque hoc*, that he held *modo & forma*, or say that he held one Acre only, *Coke 9. part. 35. B. Bucknals case, 20 Hen. 6. 20, & 21.*

And so one may avow severally where it is a joynt Tenure, or to the contrary, *Coke 9. part. 35. B. Bucknals case, 9 Hen. 6. 26. pl. 24. 2 Edw. 3. 34. pl. 19.*

But if he vary in the quantity of the Land and of the Services, he may not confess the Tenure according to the verity of the case, but may traverse *modo & forma*, or say he held one only, *Coke 9. part. 35. A, & B. Bucknals case, 5 Hen. 5. 4.*

3. When one distrains for fealty, rent, and suit of Court, and alledges seisin in all, and avows for rent, the Tenant may confess that he held by fealty and rent, and plead as to the rent nothing arrear, without that that he held by fealty, rent, and

and suit, *modo & forma*, as is alledged, and good ; and if upon Issue joyned it be found , that he held by fealty and rent, and not suit, although that the Avowry be for rent , yet inſomuch that the tenure alledged by the Avowant was traversed and found against him, Judgment shall be given against the Avowant , for in vain shall he make this traversable, and yet that he should have the return when it is found against him, *Coke 9. part. 35, & 36. Bucknals case.*

Tender of Homage ought to be to the person Tender.
of the Lord, *ubicunque fuerit infra regnum propter reverentiam*, *Bracton lib. 2. fol. 80. A. quere.* for this may be prejudicial to the Tenant.

Judgment.

If the Plaintiff counts upon a Detainer , and the Defendant appears and makes default , the other shall have Judgment for dammages and costs, and also for the value of the Cattel, *Nat. br. 69. L. No. Lib. Intra. 610. C. Sect. 20.* for by the default he confesseth the tort.

1. The Defendant said that the place is ancient demefn, &c. if the issue be found for him the Plaintiff shall not have a return, *21 Edw. 3. 7. pl. 18.* *Retorno habendo Null.*

2. If one justifies for Services and makes no Avowry, he shall not have a return, although it be found for him, *15 Edw. 4. 29. 5 Edw. 4. 6. 34. Hen. 6. Avowry 47.* for there is difference betwixt Avowing and Justifying; Avowing supposeth tenure, but Justifying doth not.

If one make a Conufance as Bailiff, he shall have a return, *No. Lib. Intra. 591. A. ſect. 9. viz.* for his Maſter.

3. The Plaintiff in a Recaption dies, the Lord ſhall have return, if another Writ be purchaſed, *11 Hen. 6. 14. pl. 3. 2.*

*Returno
habendo.*

If the Plaintiff be Nonſuited, the other ſhall have a return, *Lib. Intra. 570. D. ſect. 1. 2. 11 Eliz. Dyer 280. pl. 14. 35 Hen. 6. 47. pl. 12. 17 Hen. 8. br. ſecond Deliverance 15. 22 Hen. 7. 92. pl. 7. Crooke;* and this, although the other do make no Avowry, *16 Hen. 6. return of Cattel 1. 2 Hen. 5. 6.* for the Nonſuit confeſſeth the Diſtreſs well taken, and ſo the Avowry is need-
leſs.

But otherways he may abate the Writ, by pleading *9 Hen. 6. 4. pl. 10. 11 Hen. 6. 5. B. Danby, 35 Hen. 6. 40. pl. 1.*

But if the Count abate, or if he count not of the place of the taking, yet he ſhall not have a return before an Avowry, *35 Hen. 6. 40. pl. 1.* becauſe that is but for want of good pleading, and he may have juſt cauſe of complaint, notwithstanding for ought that appears to the Court.

The ſecond Deliverance, he ſhall not have it without Avowry, *per Newton, 16 Hen. 6. return of Cattel 1.* for it is grounded upon a Title ſhewn.

The Defendant cannot claim a property in *Repleg.* to have a return, becauſe he ought to claim at the time of the *Repleg.* ſued, *31 Hen. 6. 12. pl. 1.* and now it is too late.

The

The Plaint is removed, and it abates for default of the Sirname, there was a return awarded without an Avowry, 27 Hen. 6. 3. pl. 35. for here is no right party complained of.

Repleg. against C and D, C pleads he took them not, D justifies in right of C, and found for him; yet he shall not have a return, 22 Hen. 6. 52. pl. 27. because he justifies in the right of another, who disclaims the distress.

The Defendant pleads property in another, and found so; there he shall have a return without an Avowry, for the Plaintiff had deliverance without cause, 39 Hen. 6. 35. pl. 47. *Prisott*, because the Cattel belonged to another.

One avows for rent at two days, one whereof is not come, the Plaintiff is Nonsuited; there shall be a return in respect of the rent due for one day, because he is not meerly an Actor, per 4 Justices against three.

But *Newton* said, he ought to have several Avowries. 2.

At the Common Law a return irreplevisable was but when it was found against the Plaintiff, by an issue tried, 36 Hen. 6. 8. pl. 24. *Babbington*, for then the matter was fully tried.

If the Defendant doth not answer to the Avowry, there the Cattel shall be irreplevisable, *Lib. Intra. 571. A. sect. 4.* for he thereby confesseth the distress lawful.

Return irreplevisable after *Westm. 2. cap. 2.* is but upon a Nonsuit in second Deliverance, 2 Hen. 4. 23. pl. 9. *Lib. Intra. 571. A. sect. 4, 5.*

Upon a Nonsuit in Repleg. it shall not be, 24 Edw. 3. 33. pl. 22. if it be not after verdict, 14 Hen.

1.
Return irreplevisable, 1. At Common Law. 2. At the Statute Law.

2.

14 Hen. 7. 6. pl. 14. for he may have just cause of complaint though he be Nonsuit; but by the verdict it appears he had not.

If the Plaintiff be Nonsuited in a Replevin, and after in a second deliverance, there shall be a return irreplevisable before Avowry; but *quere*, if he shall have damages before Avowry, 10 Eliz. Dyer 28c. pl. 14. It seems he shall, for this double Nonsuit admits the taking lawful.

If the Plaintiff be Nonsuited when the Jury comes again and gives their verdict, yet there shall not be a return irreplevisable, 34 Hen. 6. 5. pl. 14. 14 Hen. 7. 6. pl. 14. for it may be he hath better evidence, which he then failed of.

The Plaintiff in *Repleg.* makes default at the *Nisi prius*, they shall not be irreplevisable, because it is out of the Law, 3 Hen. 6. 8. pl. 24.

The Plaintiff in a *Repleg.* is Nonsuited, and a return awarded, the King demises, the pledges being warned come not; *quere*, if the return shall be irreplevisable, 1 Edw. 7. pl. 13.

Or upon a Return awarded in second deliverance, 2 Hen. 4. 23. pl. 9. *Q.*

Or upon a judgment against the Plaintiff upon a Demurrer, 2 Hen. 4. 23. pl. 9. 14 Hen. 7. 6. pl. 14. 2, & 3 *Marie*, Dyer 118. pl. 77. *Q.*

Upon a Demurrer upon a plea to the Writ, and judgment for the Defendant, they shall not be irreplevisable, 34 Hen. 6. 37. B. br. *Repleg.* 6. for that is not upon the merits of the cause.

Or upon issue tried, 2 Hen. 23. pl. 9. the Defendant in a *Repleg.* pleads to the Writ, and found by the Jury so, there shall be a return irreplevisable; the contrary upon a Demurrer up-

on a Writ or Concession, 34 *Hen. 6. 37. B. br. Repleg. 6.* for a verdict is of a higher account than a Demurrer or Concession.

If the Plaintiff upon a second Deliverance suffer the plea to be discontinued, there it shall be irreplevifable, 17 *Hen. br. second Deliverance*; for the Court will not be troubled with Suits to no purpose.

Note, that at this day dammages are given where the Plaintiff is Nonsuited, or found against him, or otherwise barred in Conufance, Avowry, or Justification, for Rents, Customes, or Services, per 7 *Hen. 8. cap. 4. com. 82. B. Crokers case*, 14 *Marie Dyer* 141. *pl. 46.* 19 *Hen. 8. 11. pl. 7.*

Dammages
by Statutes.

And for damage feasant, per 21 *Hen. 8. cap. 19. 2, & 3 Marie, Dyer* 118. *pl. 77.* 4 *Marie, Dyer* 141. *pl. 46.*

But if it be for an Estray he shall not have dammages, because the Statute extends not to it, *Pasch. 34 Eliz. Ban. Regis, Rot. 292.* and being penal, it shall not be expounded by equity.

But at the Common Law the Avowant shall not recover dammages, 35 *Hen. 6. pl. 12.* for it was thought enough for him to have return of the districks.

If one have a return irreplevifable upon a Nonsuit in second deliverance, it is doubted whether he shall have dammages before Avowry, 11 *Eliz. Dyer* 280. *pl. 14.* It seems he shall, because there needs no Avowry. *Quare tamen*, for it appears not to the Court, that he had cause to distrain.

TRESPASS.]

*Quid.**Quotuplex.*

1. Court.
2. Plaintiff.
3. Defendant.
4. Thing.
5. Writ.
6. Process.
7. New Assignment.
8. Barr.
9. Judgment.
10. Execution.

Corpo-
rate

Castle.
House.
Mill.
Columbary.
Toft.
Garden.
Land.
Meadow.
Pasture.
Wood.
Park.
Forrest.
Chafe.
Pond.
Tithes.
Trees.

Inheritance

Incor-
porat:

Village.
Way.
Common.
Fishing.
Warren.
Game of Swans.
Toll.
Waife.
Stray.
Bona felonum.
Fair or Market.
Frank-foldage.
Returna Brevium.

Trespas is either b,

Common Law, upon the doing of wrong to

Trespass
is either
by

Common Law, upon the doing of wrong to

Chat-
tels

Reals

Personal

Son.
Daughter.
Neece.
Ward.
Woman.
Servant.
Prentice.
Tenants.
Prisoner.
Captive.

Living
Dead

Abducta.
Capta & fugata.
Capta fugata & impar-
cata.
Capta & interfecta.
Districla.
Fugata.
Imparcata.
Interfecta.
Percussa.
Tonsa.
Arrestata.
Capta & arrestata.
Capta & asportata.
Combusta.
Consumpta.
Depasta.
Districla.
Extracla.
Extracla & asportata.
Falcata & asportata.
Fracta.
Impedita.
Submersa.
Succisa & asportata.

Trespass.

Trespass is either by

Common Law,

Upon the
doing of
wrong to
the Body,

Menace.

Siege.

Assault.

Battery.

Wounding.

Imprisonment.

Fine.

Acquittance.

Statute.

Obligation.

Find Pledges.

Release.

Oath.

Imprisonment
till they makeAgainst a Goaler for putting
Irons upon one.

Statute Law,

Marlebridge, cap. 2. For distraining to come to
his Lect.Cap. 4. *Averia ad loca incognita fugata de com.*
in com. Westm. 1. cap. 16. 1 & 2 Mar. cap. 12.
excessive distress.Cap. 5. Distress, *extra fadum*, *Westm. 1. cap. 16.*
*In via Regia.**In com. strato.*Cap. 28. For a Successor, of a thing taken in the
time of his Predecessor.*Westm. 1. cap. 17. Distress by a Bailly not sworn.*
21 Edw. 1. De malefactoribus in parvis & viva-
*riis, &c.*4 *Edw. 3. cap. 6. For Executors De bonis aspor-*
*tatis in vita Testatoris.*5 *Rich. 2. cap. 7. Entry ubi non datur per Le-*
*gem.*8 *Hen. 6. cap. 9. Forcible entry.*1 & 2 *Maria*, For severing a Distress taken at
one time.

Trespass.



Trespafs.

In what Court Trespafs lies.

IN the County Court; but then it shall not say *Country*
vi & armis, *Nat.br.85.G.* neither against the *County*
 peace, because the Sheriff cannot determine it,
Regist. 92. A. for that Court is not to meddle
 with criminal matters.

Note, *Regist. orig. 111. B. Trespafs vi & armis*, Note.
 shall not be sued in any Court but the Kings, or
 before his Justices, if otherways a *Superfedeas*
 shall be awarded, *Coke 8. part. 120. A.* for he is
 the proper Judge of such matters, as the chief
 conservator of the Peace.

In the Marshalsey, if the party be of the Hou- *Marshal-*
 shold, Trespafs lies; but then it shall say *vi & ar-* *sey.*
mis, for battery or carrying away of goods, and
 no other causes, *Coke 10. part. 72. A.* which in-
 deed are rather civil than criminal causes.

For it shall not be *Quare clausum fregit*, *Coke*
10. part. 76. A. which is of a higher nature, and
 may concern title of Land.

It lies in Chancery for one privileged there, *Chancery.*
Regist. orig. 104. A. No. Lib. Intra. 678. B. sed. 20.
 in respect of his attendance required there.

And there shall be an *Alias, &c. Regist. 104. A.*

It lies in *Com. Ban.* or *Ban. Regis*, *Nat.br. 86. G. Com. Ban.*
 for these are high Courts of Record. *Regis.*

Ancient
Demean.

If Trespafs be brought in the Court of the King, where the reality shall come in debate, Ancient Demean is a good plea, because the Title ought to be tried there, *Coke 5. part. 105.* as in trespafs for Trees, where the Defendant claims Franktenement in the land where the Trees grew, *6 Hen. 4. 1. pl. 6.* otherwise It is no plea, *46 Edw. 3. 1. pl. 2.* because the Action is personal, which may be any where sued.

In Trespafs for a Pigeon-house with Pigeons, it is no plea, *47 Edw. 3. 22. pl. 54. viz.* Ancient demesfn, because the Action is chiefly in respect of the Pigeons.

So in Trespafs upon the Case, *5 Rich. 2. cap. 7.* because damages are only to be recovered, *21 Edw. 4. 3. 2 Hen. 7. 17. pl. 1. 47 Edw. 3. 22. pl. 54. 46 Edw. 3. 1. pl. 2.* which are personal.

Note.

And note, none may plead this, but the Tenant of the Land in Ancient demesfn, *2 Hen. 7. 17. pl. 1.* and that in respect of his service to be done to the Lord there.

Trespafs in the Five Ports, the Writ is, *Dilectio & fideli suo W. Constabular. Castri sui de D. & Custodi quinque Portuum suor. salutem. Mandamus vobis quod Audita querela A. de quadam transgr. eidem A. per B. qui est de libertate Portuum predicti, illat. ut dicitur, auditisque hinc & inde earum rationibus, eidem A. facias exhiberi celeris justitie complementum, prout de jure & secundum legem, & consuetudinem portuum predicti, fuerit faciend. ne clamor ad nos inde perveniat iteratus, &c.*

Who

Who shall have Trespafs.

Note, that he that taketh only the profit of the soil of anothers Land, shall not have a Trespafs *Quare clausum fregit*, 15 Hen. 7. 14 Hen. 8. because he hath no interest in the soil.

He that hath certain Acres of land *annuatim*, shall have Trespafs, for he hath a term in those Acres of land.

An Administrator shall have Trespafs for goods Admini- of the Intestates taken out of the possession of strator. the Administrator, *Regist. orig.* 94. A. 22 Edw. 4. 120. pl. 32. the Count, *Lib. Intra.* 649. D. *Señ. I.* for he hath a property in them *ratione Admini- strationis.*

An Administrator shall have Trespafs for goods taken out of the possession of the Intestate, in respect of his interest in them, *Nat. br.* 92. A. 14 Hen. 7. 13. *Tremaile*, the Count, *Lib. Intra.* 640. A. *Señ. I.*

An Executor shall have it, *per* the Stat. of 4 Executor. Edw. 3. *cap.* 6. and the Statute of 31 Edw. 3. gives the same remedy to an Administrator; but this is by the equity of the Statute, 4 Edw. 3. *cap.* 7. *Crooke* 24 Hen. 7. 101. B. pl. 2.

An Administrator shall have an Action of Admini- Trespafs before the Administration committed strator. to him; but not against him that justifies under the Ordinary, for he was Administrator *pro tempore*, 18 Hen. 6. 22. pl. 7. 36 Hen. 6. 8. A *Prisor*, *Register Original* 102. B. that is, for goods taken before the Administration granted.

But if the Administration be committed by word to *A*, who sells goods to *B*, and dies, and the Administration is committed to *C*; *quere*, if *C* shall have Trespafs for the goods sold: It seems not, for *A* had authority, as it seems, to sell.

Alien.

An alien Friend shall have all Actions personals, 6 Hen. 8. Dyer pl. 8. Coke 7. part. 17. A. *ratione commorantie* by the Law of Nations, which the Common Law maintains.

But an alien Enemy shall have no Action, 6 Hen. 8. Dyer 2. pl. 8. Coke 7. part. 17. A. 14 Hen. 8. 4. for it is not reason, that he that wishes ill to the Nation where he lives, should have the protection of their Laws.

Husband and wife.

Husband and wife Executrix to *B* joyn in Trespafs for taking the Goods during coverture, 21 Edw. 4. 5. per Littleton, and good, in respect of the Husbonds interest in right of his wife, viz, in taking her goods.

In a Trespafs done to the wife sole, who takes a Husband, they shall have Trespafs in both their names, Nat. br. 87. H. Regist. orig. 95. A. for the damages do concern the Husband, 21 Hen. 6. 30. pl. 16. Lib. Intr. 6. 50. C. Sect. 3. and the Count shall be *bona & catalla* of the wife, 7 Hen. 7. 2. vide 14 Eliz. Dyer 305. pl. 59. the Count, Lib. Intr. 6. 50. C. Sect. 3.

Husband and wife may joyn in Trespafs for the beating of the wife, 46 Edw. 3. 3. pl. 5. 22 Affize 60, & 87. Regist. 105 B. Lib. Intr. 6. 12, & 668. C. Sect. 4. for he is damnified by it, as well as his wife, viz. by losing his labour and society.

So for imprisonment of the Wife, *Coke 5. part 59. A. Fosters case*, for the same reason.

But if they joyn for battery of both, this abates for the battery of the Husband, *9 Edw. 4. 54. 3 Edw. 3. brev. 737.* For the battery of the Husband is not the battery of the Wife; and so as to that, she hath no cause of Action.

And if they brought a Trespafs for beating and taking away of Goods during the coverture, the Writ shall say *de bonis* of the Husband; for the Wife cannot have a property during the coverture, *Regist. orig. 105. B.*

And if the Husband and Wife are beaten, they shall have several Actions, *Regist. orig. 105.* in the Note, *quia transgressio personalis* ought to be brought only by the person injured.

Trespafs *quare domum suam fregit, & marem inde asportavit, &c.* being the house of the Wife, is good by the Husband alone, because he may pull it down and sell it, *43 Edw. 3. 16. pl. 15 & fol. 26. pl. 6. Q.* It seems so, because he cannot be sued for it during the coverture.

So for entring and chasing and carrying away of the Deer in a Park, although the Wife had a joint Estate with her Husband, yet it is a personal thing in the Husband, *43 Edw. 3. 8. pl. 23.*

So for Deeds concerning the Land of the Wife, *8 Hen. 5. 9. pl. 13.* For Deeds are Chattels, though they concern the Realty.

So in trespafs upon the Statute of *5 Richard 2. cap. 7.* because he only shall have dammages, *38 Hen. 6. 3. pl. 9. 4. Edw. 4. 13.* if he recover.

So for taking away of his Wife and his Goods,
Nat.

Nat. br. 89. O. 14 Hen. 6. 2. pl. 11. 6 Edw. 3. 208. pl. 2. 43. Edw. 3. 23. pl. 15. 44 Affize pl. 13. Regist. orig. 97. A. for this is given by Westm. 1. cap. 12. & Westm. 2. cap. 34. It seems this Statute was but in affirmance of the common Law.

Nota.

Quando breve fertur ab aliquibus ad liberum tenementum annexis fiat in nomine amborum, sed si sit de rebus libero tenemento non annexis in nomine viri tantum, sed si sit de domo fracta sit in nomine amborum, sed alii Clerici dicunt quod fiat in nomine viri tantum, Regist. orig. 108. B. This is when trespafs is brought concerning House and Lands of the Wife being covert.

Vide tamen in nomine amborum de clauso fracto & bona, &c. Lib. intra. 640. B. sect. 4. & fol. 662. D. sect. 21 Rich. 2. brev. 933. Q.

Chaplain
of a Chap.
pel.

The King collates, and the Sheriff puts him in who is collated, he shall have trespafs, Nat. br. 37. D. if the Trespafs be done after he be put in.

Commoner.

A Commoner shall not have Trespafs for any thing in the Land, viz. the soil of a Common, 4 Hen. 7. 3. 15 Hen. 7. 13. pl. 1. & fol. 12. pl. 23. For he hath only an interest in the Herbage, Q. tamen.

He that
hath not
soil.

A lets Land to B, for to sow, and A to have the Moiety of the Corn, yet B cannot have trespafs *Quare clausum fregit* against him for wasting of the Corn, for he hath interest in the whole Crop, Hill. 30 Eliz. Hure versus Oakley. And although this was not pleaded in abatement, yet the special matter being found, the Plaintiff shall not have judgment, because it appears to the

Trespass.

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the Court they cannot be disjoined to have an action in such form. For they are upon the matter joint-tenants of the Land.

He to whose use, shall not have Trespass in his own name, but in the name of the Feoffees, *Crooke 17 Hen. 7. 41. pl. 2.* For the Estate in Law is in them.

He to
whose use.

A Copy-holder shall have trespass for the breaking his Close, and cutting his Trees, *2 Hen. 8. 4. 12. Coke 4. part. 21. B. No. Lib. intra. 644. C. sect. 3.* the pleadings. For he hath an interest in both to some purposes.

Copy-holder.

He shall have it against the Lord; *20 Edw. 3. 80. Coke 4. part. 22. A.* For the Lord in this respect is in no better condition than a stranger.

Disseisee shall have Trespass for the mean profits, and all other things after his re-entry, *Coke 11. part. 51. A. Liffords case. 3 Hen. 4. 13. pl. 18. Gascoigne, 37 H. 6. 7. pl. 13.* but not before, because then he had no interest in the Land, but a bare right.

Disseisee.

But before his entry, he shall not have Trespass, *32 Hen. 6. 32. A. 38 Hen. 6. 28. A. Forrescue, viz. against one that entred before he was disseised. Q.*

Unless in case of necessity, as Tenant for the Life of another is disseized, and he for whose life he hath it, dies, or Tenant for years is outed, and the years expire, they shall have Trespass before the entry, and recover the mean profits, *38 Hen. 6. 28. B.* Where there is a necessity, the Law doth give way to usual things rather than there should be a failure of Justice.

An

Executor.

An Executor shall have Trespafs for Goods taken out of the poffeffion of the Teftator, *Nat. Br. 87. E. Regift. 98. A.* in refpect of his intereft by his Executorfhip.

And the Writ fhall not fay *ad grave damnum neque in retardationem executionis teftamenti*, *Regift. orig. 98. A.* the Count, *Lib. intra. 640. A. feci. 2.*

But this was given by the Stat. of 4 *Edw. 3. cap. 6. 14 Hen. 7. 13.*

And at this day an Executor of an Executor fhall have fuch an Aftion, *Regift. 98. A.* the rule there; it feems upon the equity of the former Statute.

But he fhould not have had it before, 25 *Edw. 3. viz. at the Common Law. cap. 5. Com. 290. A. Chapmans cafe.*

But an Executor fhall not have fuch Aftion *De claufio frafte*, 11 *Hen. 4. 3. pl. 8. 4 Edw. 4. 8. A. Catesby. viz. in vita Teftatoris*; for this is not within the Statute.

Neque de Arboribus fuccifis tempore Teftatoris, 18 *Edw. 4. 16. A. Pigott.* Nor this, and fo both are left at the Common Law.

An Executor fhall not have Trespafs before probate of the Will, unlefs it be for a thing taken out of his own poffeffion, *Com. 281. Q. rationem differentie.*

One Executor fhall have Trespafs for a thing taken out of his poffeffion, with his companion, 42 *Edw. 3. 26. pl. 12. 2 Rich. 2. Executor 75.* For Executors are but as one perfon in Law, or he may bring it alone.

But

But the 19 Hen. 6. 65. to the contrary. *Q.*
 Executor shall have Trespafs *de bonis Testatoris*
asportatis in custodia sua exten. Regist. orig. 94.
A. 2 Hen. 7. 15. 6 Edw. 4. 1. and good; for
 they are accounted the Testators, though to be
 disposed of by the Executor in performance of the
 Will.

A. takes Administration of the Goods of *B.*
C proves a Will, by which he was made Exe-
 cutor, and brought Trespafs against *A* for the
 Goods, it lies, although the Administration was
 not repealed; for the Administration was void
 from the beginning, *Mich.* 12. *Jac. Ban. Regis.*
Fisher & Young. because there was a Will made.

An Executor shall have Trespafs against the
 Lessor which outs him, during the Term, *Regist.*
orig. 102. *B.* if he have a Lease parol. *Q.* if by
 Deeds, whether he ought not to bring an Action
 of Recovery.

If the Lessor outs the Executor of the Lessee,
 the Writ shall be *Summon. per bonos summonit.*
&c. but if he outs him, and takes the Goods of
 the Lessor within the Land, the Writ shall be
pone per vad. &c. *Regist. orig.* 102. *B.* in the Note,
 and this is in respect of the damages he is to an-
 swer for taking the Goods.

Trespafs lieth by a Goaler against one that takes Goaler.
 a prisoner from him; for the Goaler is liable for
 the person; but a good bar that he is not Goaler,
 because it is the ground of the Action, 4 Edw.
4. 6. pl. 7. & fol. 44. pl. ult.

Church-wardens shall have Trespafs for the Church-
 Goods of the Church taken in their time, or in wardens
 the time of their Predecessors, *Nat. br.* 91. *K.*
8 Edw.

8 *Edw.* 4. 6. *pl.* 5. 12 *Hen.* 7. 27. *pl.* 7. 11 *Hen.* 4. 12. 8 *Hen.* 5. 4. 37 *Hen.* 6. 30. 10 *Hen.* 7. 9. *pl.* 5. For they are intrusted with them to the use of the Parishioners.

But they shall count *ad damnum parochianorum*, 8 *Edw.* 4. 6. *pl.* 12 *Hen.* 7. 27. *pl.* 7. For the Goods are the Parishioners, and the Churchwarden is interested in their right, and is accountable unto them.

But a good plea that he is not Churchwarden, 4 *Edw.* 4. 7. *A.* For that destroys the supposal of the Writ.

But 19 *Hen.* 6. 66. says; that it is not good for Goods in the time of their Predecessors. *Q.* yet the Law seems to be otherwise, else the parishioners might be damnified.

Trespafs for making a Grant of Rent in fee taken to the use of the Parochians, *Lib. intra.* 7. *D. Q.*

Heir
Ravish-
ment.

Every Ancestor male or female, shall have Trespafs for ravishing of his or her Heir apparent against a stranger, but not against the Gardain in Chivalry, unless the Father only, *Coke.* 3. *part.* 38. *B. Ratcliffs case,* *Nat. br.* 143. *R.* 30. *Edw.* 6. *pl.* 7. & *fol.* 16. *pl.* 19. *Regist. orig.* 98. *B. &* 99. *A.* and the Mother; for the education of the Heir doth properly belong to the Father and Mother.

A man shall have Trespafs for his Son and Heir, Daughter and Heir taken away, *Nat. br.* 98. *H.* 29 *Affize* 35. 21 *Hen.* 6. 14. *pl.* 29. 12 *Hen.* 4. 16. *pl.* 9. 3 *Edw.* 4. 12. *B. Danby.* For it is an injury to the Parents to lose the comfort of the Child, especially the eldest.

And

And this of what age soever his Son be, 32 *Edw. 3. Gard. 32.* though the dammage may be greater or less in regard of the Age.

A Grantee of Herbage of Land shall have Trespafs, *quare clausum fregit* for the Grasse, but not for the other profits of the Land, as Fruit-trees, and the like, 11 *Eliz. Dyer. 285 pl. 40. 3 Hen. 16. 13. A. 5. Hen. 7. 10. B.* For he hath nothing but the Herbage granted unto him.

The Heir shall have Trespafs for taking of a Heir. Deed concerning Land to him descended, and it is good, although he doth not say, *scriptum suum*, because of necessity it must belong to him, 1 *Edw. 3. 18, pl. 11.* For it goes along with the inheritance.

But not against an Executor that taketh a Box with Deeds. 1. Because the Box appertaineth to him. 2. He had not knowledge what was in the Box. 3. The Heir hath other remedy against him, *scilicet* a Detinue, 43 *Edw. 3. 24. pl. 3.* because the Box and Deeds come to him in a lawful way, though he cannot justify the detaining.

But it lies against an Executor for taking away a Furnace fixed, or Fatts fixed to the Free-hold, or Pales fastned, Windows, Doors, Evidences loose, 21 *Hen. 7. 26. pl. 4.* because they all belong to the Free-hold as part of it.

It lies for an Heir against an Executor for taking Fishes out of a Pond, *Mich. 36 Eliz. Ban. Regis. Rot. 25. Parlett versus Gray. Croke 118 pl. 60.* For they belong to the soil, *viz.* the Land covered with Water which makes the Pond.

So

So for Deer or Pigeons, *vide* Affize 27. pl. 29. but not tame Deer or tame Pigeons; the one is as it were an Inheritance, the other a Chattel.

Lessor.

The Lessor excepts the Trees, he shall have Trespafs *quare clausum fregit*, 14 Hen. 8. 1. 28 Hen. 8. Dyer. 19. pl. 48. 46 Edw. 3. 22. pl. 3. Coke 8. part. 63. A. Swaynes case. against the Lessor, if he cut them down.

A Lessor at Will shall not have Trespafs, although he determines his Will, until he enters, Crooke 3. Hen. 8. 163. pl. 4. For before he hath no Title.

A enters upon Tenant at Will, and subverts the soil, he shall have one Action, and the Lessor another, 19 Hen. 6. 45. pl. 94. so of a Copyholder and Lord, 2 Hen. 4. 12. Coke 4. part. 31. A. For as they are both damnified, so it is reason they should both have recompence.

Lessee.

Lessee cuts Trees to the intent to repair, the Lessor takes them, the Lessee shall have Trespafs, 44 Edw. 3. 44. for the dammage done him in causing him to lose his labour in cutting of them.

A stranger cuts Trees, the Lessee shall have Trespafs, and shall recover treble dammages, *Doct. & Stud.* 34. A. 23 Hen. 8. Br. wast. 138. 44 Hen. 8. 26. because the Lessor shall recover so much of the Lessee in respect of the Waste.

But if the Lessor dies, the Lessee shall recover but single dammages, 44 Edw. 3. 26. Crooke 3 Hen. 8. 163. pl. 4. because no more shall be recovered against him by the Heir.

Master.

1. If the Servant be beat, the Master shall have Trespafs, Nat. br. 91. I. Regist. orig. 102. A. 8 Hen.

8 *Hen. 6.* 28. 19 *Hen. 6.* 35. *pl.* 73. although he be but a servant at will, 21 *Hen. 6.* 9. *A. Newton. vide* 11 *Hen. 4.* 2.2. For the beating of the Servant is a damage to the Master, and the Servant may also have this Action.

2. For taking away his Apprentice, *Nat. br. 91. I.* 8 *Hen. 6.* 28. 21 *Hen. 6.* 31. *pl.* 18. whereby he loseth his service.

3. The Lord of a Villain shall have Trespafs, 22 *Hen. 6.* 30. 32. for taking away his Villain, or beating him, as it seems.

The Ordinary shall have it for a thing taken Ordinary. out of his possession, *Nat. br. 91. M.* 18 *Hen. 6.* 23. 7 *Hen. 4.* 18. *pl.* 22. 11 *Hen. 7.* 12. 17 *Edw. 2. brev.* 8 22. as Ordinary, for he hath a kind of property in it. But not for a thing which was not in his possession, *Nat. br. 92. A. Coke 9. part 39. A. Hensloes case,* 7 *Hen. 4.* 18. *pl.* 22. For the Law takes no notice of his right without a possession.

A Parson shall have Trespafs for Tithes taken Parson. after severance of the 9 parts, 10 *Hen. 4.* 2. *pl.* 2. *Gascoign,* 21 *Hen. 7.* 27. *pl.* 5. before any seizure, because it is certain by the severance what was his, and the Law casts the possession and property upon him, *Com. 281. A. Foxes case.*

But not of a Mortuary before seizure, *Com. 281. A.* 10. *Hen. 4.* 1. but there is but a bare customary right.

A Parson or Vicar shall have Trespafs for the Walls or Glass of the Church, or Grass or Trees in the Church-yard, &c. or Glebe-Land, 11 *Hen. 4.* 12. *pl.* 25. 8 *Hen. 6.* 9. *pl.* 20. 11 *Hen. 6.* 4. *B. Danby.* 2. For the Church belongs

to the Parifhioners, and the Chancel to the Parfon, yet the free-hold of the Church is in the Parfon.

Parfon *imparfonee* fhall have Trespafs againft any that is admitted and inducted into the faid Church, if he intermeddle with the Glebe or Tythes, *Com. 500. B. 38 Hen. 6. 24. 39 Hen. 6. 21. & 27.* becaufe they belong unto him.

Protected
perfon.

He that hath a protection Royal, fhall have Trespafs againft him that takes his Goods, *Nat. br. 92. B.* though if not protected, he might take them; for during the protection, he is not to be molefted, and fo hath wrong done him.

Poffeffor.

If one hath the poffeffion of a thing, he fhall maintain an Action againft him that hath no right, *Com. 546. A.* whether his poffeffion be lawful or not.

Note.

But note, that upon a poffeffion in Law only he fhall not have Trespafs, *22 Hen. 6. 49. 5.* but it muft be an actual poffeffion, for that is vifible and notorious, and the other is not fo, but may be difputable.

But if *A* gives Goods to *B*, *B* fhall have Trespafs before poffeffion, for he hath the property in Law in them, *2 Edw. 4. 25. per 2 Juftices, Coke 3. part. 26, 27. Butler & Baker.* and property in Law is made then a poffeffion in Law.

In a Trespafs brought it was found by office, that another was Tenant, and that it efcheated to the King, this fhall abate the Writ as to the things upon the Land, *Com. 488. B. Nichols cafe, & 546. A. 19 Edw. 4. 2. pl. 5.* becaufe the Land was the Kings, and not the Plaintiffs.

He

He that enters upon the possession of the King, shall not gain possession, therefore he shall not have Trespafs, *Com. 546. A. Paramors case. 2 Hen. 4. 7. pl. 29.* For nothing can pass out of the Crown but by matter of Record.

Or upon a Farmer of the King, *2 Hen. 4. 7. pl. 29.* For he is in upon the Kings right, and the prejudice done unto him, is done unto the King immediately.

But against him that outs the Farmer, the King shall have Trespafs, *Com. 546. A. Paramors case.* Q. whether the Farmer may not also have Trespafs.

The King shall have Trespafs, *Nat. Br. 90. I. King. Regist. orig. 99. A.*

And in this case the party cannot make fine, because the dammages are to the King himself, *10 Hen. 4. 3. pl. 7.* and the fine shall be included in the dammages. Q. *tamen.* For it seems he shall make fine.

But for Trespafs in the Kings Lands there uses to be an information in the Exchequer, *Nat. br. 90. I.* This is not by way of English Bill, but on the Pleas side. Q. if it may not be by an English Bill.

And in such case the judgment is, that the party shall be removed and put out of possession, although that it be but a personal Suit, and the removal shall be by Writ formed in the case, directed to the Sheriff. *Com. 561. B.* This Judgment is by way of Decree; *ergo* on the Pleas side.

But the King may have a Trespafs *quare clausum fregit*, *Nat. br. 90. I.* if he will.

Queen.

The Queen shall have Trespafs without the King, *Nat. Br.* 101. for Lands belonging to her Revenue, and she is not in the nature of another Feme covert.

Recusant.

Recusancy shall be pleaded in disability to sue an Action of Trespafs for as many Hereditaments as are not seised into the Kings hands, 3 *Jac. cap.* 5. For such as are seised concern not the Recusant.

Bishop.

A Bishop shall not have an Action of Trespafs for a Trespafs made in a vacancy of the Bishoprick, 39 *Edw.* 3. 12. *pl.* 18. 18 *Edw.* 2. *Trespafs* 237. For that could not concern him, but the Guardian of the Spiritualities, as it seems.

Vide tamen Regist. 101. A Writ formed in such case for the succeeding Bishop. *Ergo. Q.*

Master of
an Hospital.

A Master of an Hospital shall have an Action of Trespafs for a thing done in the time of his Predecessor; for the damage redounds to the House, *Nat. br.* 89. *G. Regist. orig.* 196. *B.* the Writ there. And by the same reason why may not the Bishop for a Trespafs done in the Vacancy?

Tenant at
will.

Tenant at Will shall have Trespafs against a Stranger, 19 *Hen.* 6. 45. *pl.* 94. 12 *Edw.* 4. 8. *pl.* 20. 35 *Hen.* 6. 5. *pl.* 7. For he hath a Title against him.

For entering his Close, and burning his Hay, 35 *Hen.* 6. 5. *pl.* 7.

Copy-holder.

Copy-holder shall have Trespafs, *Coke* 4. *part.* 31. *A.* 2 *Hen.* 4. 12. *pl.* 49. *Coke.* 4. *part.* 4. 21. *B.* & 23. *B.* and this before his admission, *per* descent; for his admission is but a Ceremony, yet essential to his Estate.

Tenants

Tenants in Common join in Trespafs touching their Tenancies, *Littleton, ſect. 315.* 18 Hen 6. 5. 14 Hen. 6. 9. pl. 38. 12 Hen. 6. 4. pl. 11. 45 Edw. 3. 13. 5 Hen. 4. 1. 14 Hen. 4. 31. 43 Edw. 3. 24. pl. 3. 22 Hen. 6. 12. in reſpect of their common and undivided intereſts.

But if one dies, the other ſhall have an Action for all the Trespafs, 43 Edw. 3. 24. pl. 3. For it ſurvives with the Land.

They ought to join in Trespafs, 5 Rich. 2. cap. 7. 34 Hen. 6. 32. pl. 16. 4 Edw. 4. 18. 21 Hen. 7. 22. becauſe it concerns them both in common and undividedly.

Note, For battery they ſhall not join, Reg. orig. 105. B. For that is a diſtinct Trespafs; for the beating of one is not the beating of the other.

A had Male Swans, B Female, which having young ones, for the young ones they ſhall join, if they be taken away, becauſe they are Tenants in Common, *Coke. 7. part. 17. A. 2 Rich. 3. 15, 16.* of the Swans and the young ones.

One Tenant in common ſhall not have Trespafs *de bonis aſportatis*, againſt his companion that takes them, *Lib. Intra. 653. B. ſect. 3.* becauſe he hath an intereſt in them.

Tenant for anothers Life is diſſeiſed, he for whoſe life he held dies, Tenant for anothers Life ſhall have Trespafs without re-entry, becauſe the Act of God ſhall not prejudice him, 19 Hen. 6. 28. B. *Aſcough. Coke 5. part. 41. Knights caſe.*

Tenant in common.

Tenant for anothers life.

Tenant at sufferance. Tenant at sufferance shall not have Trespafs, *Crook. 17 Hen. 7. 47. A.* for the feebleness and uncertainty of his Estate.

Outlawed. If a man be outlawed or attainted in Trespafs or Felony, and pardoned, he shall have Trespafs for Trespafs done to his person before the pardon, *29 Affize pl. 63. No. Lib. intra. 248. A. 30 Edw. 3. 4. pl. 18.* For by the pardon he is made *rectus in curia*, and restored to the priviledge of the Law *ab initio*.

But for other Trespafs, *quere. 5 Edw. 3. 170. viz.* concerning his Goods or Lands in respect of the forfeiture.

But before a *Scire facias* be brought upon the pardon, he cannot without doubt, because the pardon was conditional, *21 Edw. 3. 55 pl. 7. Q.*

Against whom Trespafs lies.

Admini-
strator.

Administrator takes the Goods, B proves a Will, by which he was made Executor, and brought Trespafs, and it lies, although the Administration were never repealed; for the Administration was void *ab initio*, and the Administrator a Trespasser, *Mich. 12. Jac. Ban. Regis. Fisher & Young.*

Agree-
ment.

A makes a Trespafs, B agrees to it afterwards, and avows the doing of it; yet B is no Trespasser, *9 Edw. 3. 35. pl. 17.* For the consenting is a matter *ex post facto*, and cannot make him a Trespasser *ab initio*.

Alien.

Trespafs lies against an Alien, *Digest. br. 72. A.* For an Alien is subject to the Laws of the Land, as much as concerns the peace and quiet of it.

A person attainted shall be sued in Trespafs, Attainted
Mich. 38, & 39 Eliz. Com. Ban. Banister & Truffel. person.
No. Lib. intra. 248. A. For he shall not take advantage of his own wrong, to plead it in bar to the prejudice of another.

An Infant makes a Letter of Attorney to *A*, Attorney.
 to take Livery and Seisin for him, *A* takes it,
 the Infant shall not have Trespafs against *A*, because it is for his advantage to take the Livery for him, 21 *Hen. 6. 31. B. Ascue.*

Trespafs *De muliere abducta cum bonis viri, &c.* Husband
 lies against Husband and Wife, because the Wife and wife.
 may assent at the time to the Ravishment, and also to the carrying away of the Goods, 43 *Edw. 3. pl. 15. 44. Assize 13.* and this Assent makes her a joint Trespasser with her Husband.

Trespafs against Husband and Wife, the Wife is taken by *Capias*, but not the Husband; *Dodderidge* and *Haughton* Justices said, that if the Declaration be against the Wife alone, it is not good, and if there be no Declaration, the Wife shall be at large; but afterwards *Dodderidge* said, a Declaration shall be put in against the Husband and Wife, and the Wife appearing, shall be committed to prison; to which *Crooke* agreed: yet *quere* what was done in it, *Mich. 15 Jac. Ban. Regis. Ashwel* against *Opshard* and his Wife; if no Bail be put in for her: So hath it been since held by *Rolle* Chief Justice.

If the Woman beat another, the Husband must be named in the Writ, *Regist. orig. 105. B. Lib. intra. 612. A. scil. 11.* for he must answer for his Wifes behaviour.

Comman-
der.

Trespafs lies against him that commands another to do a *Trespafs*, *Doct. & Stud.* 19. A. *tamen quere*. For it seems otherwise.

Body po-
sitick.

It lies against a Master of an Hospital and his Brethren, *Regist. orig.* 105. B. For they are one body in Law, and so it is but one *Trespafs* done by them all.

Dean and
Chapter.

It lies against a Dean and Chapter, 32 *Hen.* 6. 8. pl. 13. for the same reason.

Mayor &
Commu-
nalty.

It lies against a Mayor and Communalty, *Quare vi & armis*, 38 *Edw.* 3. 18. 8 *Hen.* 6. 1. 9 *Hen.* 6. 36. 20 *Hen.* 6. 9. 15 *Edw.* 4. 2. 4 *Hen.* 7. 13. 32 *Hen.* 6. 10. for the same cause.

But no *Capias* lies against them, because they cannot appear all in person; for this would make confusion, 45 *Edw.* 3. 2 & 3. 22 *Affize* 67. 21 *Edw.* 3. 59. pl. 1. But they must appear by an Attorney for them all.

Disseisor:

Disseisee shall have *Trespafs* against his Disseisor before his entry, for the former entry upon his Disseisin, 32 *Hen.* 6. 32. 38 *Hen.* 6. 28. A. *Fortescue*.

But after his entry he shall have *Trespafs* against the Disseisor for all the mean profits taken during the Disseisin, *Coke* 11. part. 51. A. *Lif-fords* case, 3 *Hen.* 4. 13. pl. 18. *Gascoigne*. 37 *Hen.* 6. 7. pl. 12.

But shall not have *Trespafs* against the Disseisor of the Disseisor, for then the last Disseisor should be twice charged, *Coke* 11. part. 51. once by the first Disseisor, and a second time by the Disseisee, which is unreasonable.

Neither

Neither against the Feoffee or Feoffor of the former Disseisor, 34 Hen. 6. 30. pl. 14. 13 Hen. 7. 15. Coke 11. part. 51. for the same reason. Liffords case, 2 Edw. 4. 18. pl. 12. per 2 Justices, Crooke 12 Hen. 7. 1. pl. 2.

But against a Co-adjutor of a Disseisor it lies, 21 Edw. 4. 5, & 19. for he is as the Disseisor himself.

It lies against an Infant, Digest. br. 72. Q. of Infant. what age. It seems at the age of Discretion.

It lies not against an Executor, *quia actio Executor. personalis moritur cum persona*, Doct. & Stud. 75. viz. for a *Trespass* done by the Testator, if personal.

Guardian shall have *Trespass* against his Ward, Guardian. 5 Hen. 4. 2. pl. 7. Q. for what *Trespass*; whether for a *Trespass* done to him as his Guardian?

It lies against an Idiot, Digest. br. 72. A. Idiot. Q. for it seems it lies not against one not *compos mentis*.

Trespass and Imprisonment lies not against any Judge. of the Judges at *Westminster*, although he commit him without cause, 21 Hen. 6. pl. 9. *in fine*. For this would be to affront Justice, to call the Judges in question for doing things as Judges. But they are questionable by the King.

But if Auditors commit not an Accomptant Auditors. forthwith, but at another time, *Trespass* lies against them, 27 Hen. 6. 8. pl. 7. For their power is limited to time and place; for they are Judges but *hac vice*. (

It

Miller.

It lies against a Miller that takes toll of them that are Toll-free, 41 *Edw.* 3. 24. *pl.* 17. 44 *Ed.* 3. 20. *pl.* 16. for it is dammage to them, and wrong in the Miller.

Queen.

It lies against the Queen sole without joyning the King; for the King cannot be a Trespasser to any.

Lord.

Trespafs lies not against the Lord, *per Marlebridge* cap. 13. *Q.* for what Trespaffes, and by whom. It seems for Trespaffes done to his Villains most properly.

Non ideo puniatur dominus per redemptionem, *Coke* 4. *part.* 11. B. *Bevills* case.

But afore this Statute Trespafs did lie against the Lord *vi & armis*, 48 *Edw.* 3. 20. *pl.* 16 *Tborp.* for there the peace of the Commonwealth is concerned.

The reason that it lies not against the Lord is, inasmuch that he cannot come within his Tenants Land, being within his Fee, against the peace, although he had not cause to distrain; for it seems he may go any where within his own Fee, 47 *Edw.* 3. 7. *pl.* 3. *Finchden.* *Quare tamen.*

This Statute is intended as well to every Lessor as of the Lord, 9 *Hen.* 6. 43. *pl.* 21. this is in cases of Entries to distrain.

If the Lord distrain where nothing is in arrear, yet Trespafs lies not against him, *Coke* 4. *part.* 11. B. *Bevills* case, 9. *part.* 76. A. because he may do this as Lord. *Q.* for it seems unreasonable to vex his Tenants without cause; yet they are not without remedy, for they may replevy the distress.

But

But if the Lord distrain where there is nothing arrear, and the Mesn will put his Cattel in the Pound for the Cattel of the Tenant, and the Lord will not permit him, Trespas lies against the Lord, *Coke 9. part. 22. B. Case of Avowry*; because here the Lord is offered a legal way to come to his right, if any thing be due to him.

And if the Lord incroach, and afterwards distrain for the Services, and for the Incroachment also, the Tenant may tender the very Services, and shall have Trespas for the other, *Coke 4. part. 11. B. Bevis case, 10 Hen. 6. 3. pl. 11.* for though the Law favour him as Lord, yet it will not countenance his incroaching.

And if a Bailly or Servant distrains where nothing is arrear, Trespas lies, because it is not within the Statute, *Coke 9. part. 76. A. Combs case, 9 Hen. 5. 10. 11 Hen. 4. 78. B. 9 Hen. 7. 4. 48 Edw. 3. 20. pl. 16.* and they must take heed not to be too officious for their Master.

When the Lord abuses his Authority given him by the Law, he shall be punished by Trespas, *Coke 8. part. 146.* the six Carpenters case; for the Law will not countenance wrong, but punish it in any person.

If he labour or kill the Distress, *8 Edw. 4. 15. 22 Edw. 4. 5. pl. 16. & fol. 47. pl. 22. Coke 8. part. 146. B.* Trespas lies; for he must use it only as the Law allows.

If he tie the Cattel in the pound, *27 Affize 64.* which he ought not to do, Trespas lies against him.

If

If he break the hedges or gates, or such like, of the party where he distrains, 20 *Edw.* 4. 3. *pl.* 11: 48 *Edw.* 3. 6. *pl.* 10. for though the Law allow him a way to come by his right, yet in doing it, it allows him not to do damage to the other unnecessarily.

If he cut the Trees, or stay all night, 11 *Hen.* 4. 75. upon the Land, for this the Law warrants him not to do.

The Lessee cuts Trees to repair, the Lessor carries them away, and Trespass lies against him, 44 *Edw.* 3. 44. for the Lessor might cut them, and therefore to take them away was a Trespass.

If the Lessor distrain damage feasant, 5 *Hen.* 7. 10. *pl.* 2. upon the Land left; for he hath no present interest, and so there can be no such damages.

So if he out the Termor, 48 *Edw.* 3. 6. *pl.* 11. Trespass and Ejectment lies.

Or the Executor of the Termor, *Regist. orig.* 102. B. may have this Action, for now the term is come unto him.

The Lessor excepts the Trees, and roots them up, it seems Trespass lies, *Coke* 11. *part.* 49. B. *Liffords* case, in respect of the damage done in the Soil by the rooting. *Quere tamen*, for the whole Trees are reserved.

The Lord sells the Distress, and buys it again, Trespass lies, 29 *Hen.* 8. *Dyer* 35. *pl.* 34. for he ought not to sell it, and the buying of it again cannot salve the matter.

It lies by a Copyholder against the Lord that outs him, 21 *Edw.* 4. 80. *Coke* 4. *part.* 22. A. in

In respect of his interest in the Land by the Custom of the Mannor.

The Reason in all these Cases is, when one hath authority, license, or entry by the Law given him, by the misusing it, or the not doing it as he ought, he is a Trespasser *ab initio*, Coke 8.146.

It lies against one that is deaf and dumb, *Di- Deaf and gest.br.72. A.* for he may see to do a Trespass. *2. dumb.* if it lies against a blind man; it seems it doth.

If Tenant at will make voluntary waste, *Coke Tenant at 5. part.13.B. Salops case, Littleton, 15. A. fo. per will.* 3 *Marie Dyer* 122.B. This is a determination of the Will of the Lessee, and Trespass lies by the Lessor without entry, because the term is determined.

For cutting Underwood Trespass lies, 2 *Edw. 4.24. pl. 25.* But *quere* in what cases.

It lies not against Tenant by sufferance, because he comes lawfully to the possession, 22 *Edw. sufferance.* 4.13. *pl. 3. viz.* at the first, and he holds not by tort, because by sufferance.

If there be two Tenants in common of a fold- Tenant in age by prescription, one shall have a Trespass against the other, for the breaking the fold, *Nat. Common.* *br.91. A.H. 2.*

For taking away the Meer-stones that bound Meer-Land, 1 *Hen. 5. 1. pl. 1.* for this is a great injury stone. to the Owner of the Land, bounded by them.

Note, when the Court hath not Jurisdiction of Sheriff, the cause commenced there, the Officer that makes the Arrest shall be a Trespasser; but where the Court hath Jurisdiction, and proceeds *erronice*, there it is not punishable, *Coke 10. part.*

76.A. for the Officer is not to judge of the proceedings; but where there is no Jurisdiction the Officers have no warrant at all for what they do, for they are accounted no Officers.

The Sheriff takes one not named in the Writ, *Trespass* lies against the Sheriff, 11 Hen. 4. 91. A. Haukeford, 13 Hen. 4. 2. Haukeford & Thirning; for he hath no warrant for the Arrest. It seems also a Writ of false Imprisonment lies.

But if the Plaintiff shew another person to him, that was not to be Arrested, the Action lies against them both, for they are both Actors in the same *Trespass*.

A procures the Sheriff to Arrest B without a Writ, and after purchased a Writ, and the Sheriff arrests him afterwards, being in his custody, the Action lies, 7 Eliz. Dyer 244. pl. 61. for the purchasing the Writ, and Arresting of him afterwards, cannot purge the first wrong.

The Sheriff takes B upon a *Capias*, and returns not the Writ, B shall have *Trespass*, 20 Hen. 6. 24. A. 21 Hen. 6. 5. for if the Writ be not returned, it is as if there were no Writ.

Otherwise upon a *Capias ad satisfaciend.* for that is an Execution, and needs no return, Coke 4. part. 67. A. *Capias* to the Sheriff of Middlesex, and he takes him in London, *Trespass* lies, 16 Edw. 4. 6. for it is out of his County, and so done without warrant.

So if he makes a Repleg. of Cattel distrained of an stranger, he may have *Trespass* against him, 14 Hen. 4. 24. pl. 32. per Haukeford & Thirning, Doff. & Sind. 150. A. 2.

So if he come to make a Repleg. and breaks the hedges and gates, 20 *Hen. 6. 28. pl. 19.* for he ought not to do such violence.

So if he attach the Horfe of the Master, in possession of the Servant, for the debt of the Servant, *Doct. & Stud. 138. B.* for the property is in the Master.

So if he breaks the house to Arrest for Debt or Trespafs, 13 *Edw. 4. 9. A.* 18 *Edw. 4. 4. A. Coke 5. part. Semayns* case; for this is against Law.

So if he makes a good return in Law, but a false in deed upon a *Habeas corpus*, *Coke 9. part. 99. B. Bags* case, 9 *Hen. 6. 44.* for he ought to return the matter of fact truly.

If he takes Felons goods, where another hath them within his Hundred, *Nat. br. 91. F.* for this is without warrant.

One appears for receiving Felons, the Sheriff takes his Goods, and after he is acquitted, *Trespafs* lies against the Sheriff; for he ought to have seized them only, and the other shall find Sureties, and if he can find none they shall be in the custody of his Neighbours, 43 *Edw. 3. 24. pl. 1.* which is in custody of the Law; but where they are taken they are not so.

It lies against one outlawed, *Digest. br. 72. A.* Outlaw. *Mich. 38 & 39 Eliz. Cpm. Ban. Banister* against *Trussel*, *No: Lib. Intra. 248. A.* for though an Outlawed person is not protected by the Law, yet he may be punished by the Law for wronging another, else it might be mischievous.

For what matters Trespass lies, viz. for doing of wrong to the damage of another; 1. touching Inheritance: 2. touching Chattels: 3. touching the Body.

Of Inheritance.

The Plaintiff ought to shew the Town where the Inheritance corporate lies, concerning which the Trespass is brought; for otherwise there can be no venue to try the Issue, *Trin. 9 Jac. Ban. Luke versus Sampster.*

Of a Castle.

Quare vi & armis castrum ipsius E apud D, fregit, &c. Regist. orig. 106. B.

Of a Messuage.

Trespass for the breaking of a house, *Nat. br. 87. D. 88. A. Regist. Orig. 94. A. the Count, No. Lib. Intr. 653. C. sed. 7.*

Of breaking a house, and the Count was of a Church by a person, and good, for the Church is a House, viz. *Domus Dei, 8 Hen. 6. 9.*

Of breaking a House, and burning the Timber, *Regist. orig. 94. B.*

Of the burning of a House, *Regist. orig. 110. A. Nat. br. 88. N. the Count, Lib. Intra. 607. C, & B.* This is Felony by the Law, and punishable by death: *Ergo quare*, whether Trespass lies.

For breaking the Door, and Windows of the house, *Regist. orig. 99. A. Nat. br. 92. D.*

Mill.

For breaking the Head of a Mill, *Regist. 96. A. Nat. br. 88. M. viz. of the Mill-pond.*

Pigeon-house.

For breaking a Pigeon-house, *Regist. orig. 104. B. 10 Hen. 6. 19. A.* This is also Felony, if it be with intent to take the Pigeons.

For

For breaking my Close the Writ may be with a Land. *continuando*, Nat. br. 91. L. the Count, Lib. Intra. 647. D. sect. 1. 642. A. Sect. 6. Lib. Intra. 619. A. sect. 1. viz. of a Trespafs committed such a day, and continued *diversis vicibus* till such a time afterwards:

For breaking a Close, the count was of a Church-yard; for that is a Close, because inclosed, 8 Hen. 6. 9. pl. 20. and for digging in it, Regist. orig. 94. A. 2 Rich. 2. Barr 237. Nat. br. 87. B. 90. K. Q. who shall bring it, whether the Parishioners or Churchwardens, or the Parson or Vicar.

The Count, No. Lib. Intra. 661. D. Sect. 12: Lib. Intra. 622. B. Sect. 1. 646. C.

For digging my Gravel, the Count, Lib. Intra. 646. C. Sect. 2.

For digging in my Land, Coke 9. part. 12. A: 7 Hen. 4. 11.

For digging in my Mine, and carrying it away, Regist. orig. 104. B. 43. Edw. 3. 35. pl. 53.

For digging in my Quarrey, Regist. orig. 105. A. and carrying the Stones away.

For hindring working in my Mine, Regist. orig. 104. A. in the digging of Lead, Coles, &c.

For breaking my Bridge, Regist. orig. 106. A. or a Bridge, which I am bound to maintain *ratione tenure*, or otherwise.

Upon 8 Hen. 6. cap. 9. the Writ may be *vi & armis*, without shewing the entry of the Defendant congealable, 34 Hen. 6. 26. pl. 14. because the Action is grounded on the Statute.

It was brought upon a Disseisin and Detainer with force, although that the Statute is within

E e

the

the disjunctive, 6 *Hen.* 7. 12. 10 *Edw.* 4. 11. *pl.* 33. *viz.* of a Disseisin or Detainer by force; for the word Or is sometime used copulative as well as disjunctive.

It lies upon an entry with force, although the entry be congealable, 9 *Hen.* 6. 19. because force is forbidden by that Statute.

Upon 5 *Rich.* 2. *cap.* 7. the Writ needs not mention what Lands certain, 4 *Edw.* 4. 18. *pl.* 35. 5 *Edw.* 4. 26. *A.* for the Statute doth not direct it.

It shall not be *vi & armis*, without shewing that the entry was congealable, 34 *Hen.* 6. 26. *pl.* 4. for if it were not congealable, it is supposed to be *vi & armis*.

If the entry be supposed in *A* and *B*, where *B* is a Hamlet of *A*; yet good, because damages is only to be recovered, 5 *Edw.* 4. 8. and not the Land, and so the place is not much material.

Meadow. For breaking of my Bank, by which my Meadow is drowned, *Regist.* 106. *B.* *Coke* 9. *part.* 50. *B.* *Nat. br.* 88. *L.*

For digging my Meadow, *Coke* 9. *part.* 12. *A.* 7 *Hen.* 4. 11. for thereby the grafs is spoiled.

Wood. For entring his Wood, and taking away an Airy of Hawks, *Regist. orig.* 96. *B.* 110. *B.* *Nat. br.* 86. *L.* 22 *Hen.* 6. 59. *Nat. br.* 89. *K.* for the Owner of the Wood hath a property in the Airy.

For cutting his Trees, *Regist. orig.* 110. *A.* *Nat. br.* 98. *K.* 10 *Edw.* 4. 2. *pl.* 5.

For pulling up his Trees by the Roots, *Regist. orig.* 95. *B.* for that is utter destruction of them.

For

For pulling up of young Trees, *Regist.orig.95.A.* for in time they might amount to profit.

For eating up his blades of Grass, and springs of his young Wood, *Nat.br.87.K.* for this spoils the Copice.

For breaking his Park, *Regist.orig.96.A.* 109. Park.
B. 110.A. Nat.br.87.A. 46 *Edw. 3. 12. 18 Edw. 4. 14. pl. 12. Nat.br.98.B.* 6 *Edw. 6. Dyer 7. pl. 37.* for thereby he is endangered to lose his Deer, and is put to charge to repair his Fence.

For entring his Park, 20 *Hen. 6. 37. pl. 7.*

De malefactoribus in Parcis, upon the Statute, *Trespafs upon the Statute.*
 21 *Edw. 1. Regist.orig.111.B.*

The Count, *Lib. Intra. 650.D. Sect. 4.*

Upon the Statute of *Westm. 2. cap. 28. 7 Eliz. Dyer 238. pl. 34.* for the King.

The Count, *Lib. Intra. 652.A. Sect. 9.*

Upon *Westm. 1. cap. 20.* within the year, *Nat. br. 67.D.*

The Grantee of the herbage of a Forest shall have *Trespafs*, *quare clausum fregit*, against any that takes the grass, 11 *Eliz. Dyer 285. pl. 40.* in respect of his interest, by virtue of his grant.

For entring his Chase, 42 *Edw. 3. 2. pl. 8. 43 Chase. Edw. 3. fol. 8. pl. 23. 43 Edw. 3. 8. pl. 23.* for thereby his game is disturbed.

He needs not shew how he came to the Chase, 42 *Edw. 3. 2. pl. 8. 43 Edw. 3. 8. pl. 23.* for the Title of the Chase, it may be, will not come in question.

For hunting in his Chase, the Count, *Lib. Intra. 650.C. Sect. 1.* hunting, and disturbing his game.

Pond.

For fishing in his pond, *Regist. orig.* 95. B. Nat. br. 87. A. and taking his Fish.

For breaking his Pond, by which the water and fish went out, *Nat. br.* 87. L.

Tithes.

For carrying away his Tithes, being severed from the Ninth part, *No. Lib. Intra.* 686. C. *Señ.* 23. the Count, *No. Lib. Intr.* 678. B, & C. *vide Stat.* 2 *Edw.* 6. But before this Statute an Action of *Trespass* lay at the Common Law.

For hindring the Parson to carry away his Tithes, *Regist. orig.* 105. A. for thereby he is damnified in his loss of time, besides what other loss might befall.

Trees.
Inheritance.

For cutting his Trees, where one had the Land and the other the Trees, *Crooke* 12 *Hen.* 7. 16. B. *Vavisor*, *Coke* 8. part. 137. B. *Barringtons case*, *Coke* 11. part. 49. B. *Lyffores case*, and he that had the Land cuts the Trees.

Fishing.

For fishing in his severed water, *Regist. orig.* 96. A, & B. 109. *in fine*, *Nat. br.* 87. G. 89. B.

The Count, *Lib. Intra.* 666. A.

For hindring his free Fishing, *Regist.* 95. B. Nat. br. 88. G.

It is severed Fishing, that a man hath in his own Land, and free in the Land of another, 17 *Edw.* 4. 7. pl. 5. per 2 *Justices*.

Warren.

For entering his Warren, *Regist. orig.* 93. B. 96. B. 109. B. 110. A. Nat. br. 86. M. 5 *Hen.* 7. 10. B. 3 *Hen.* 6. 55. B. 34 *Hen.* 6. 20. pl. 9. Nat. br. 89. K. to take, destroy, or disturb his game.

The Writ shall not say *Lepores suos*, because he hath not a property in them, 3 *Hen.* 6. 55. pl. 34. *Regist. orig.* 109. B. 96. B.

And

And for this cause he shall not say *pretii*, or *ad valentiam*, 8 *Edw.* 4. 5. *pl.* 16. *Lakin*; but leave it to the Jury to confider of the dammages.

The Count, *Lib. Intra.* 650. *C. Sect.* 2. 3.

For breaking his Warren, and carrying away his Conies, 5 *Edw.* 53, 54.

For taking away his Swans, *Coke* 7. *part.* 16, 17. Swans. 7 *Hen.* 6. 27.

For disturbing him to take toll in a Fair or Toll Market, or other place, *Regist. orig.* 103. *A. Nat. br.* 91. *G.*

But if he be disturbed in a Market or Fair, he ought to shew the place, 2 *Edw.* 3. 32. *pl.* 9. because it is traversable.

If a Miller take toll of them that are Toll-free, it lies, 41 *Edw.* 3. 24. *pl.* 17. 44 *Edw.* 3. 20. *pl.* 16. *vid. antea.* for this is encroaching upon the priviledge of another to his damage.

For taking a Wreck of the Sea, *Regist. orig.* 103. Wreck. *A.* 5 *Edw.* 3. 174. *pl.* 91. without seisure, *Nat. br.* 91. *D.* for he who claims the right in it, ought to seize it, that the right may come in question, if it be disputable.

For taking a Waif, *Regist. orig.* 100. *A. B.* with Waif. out seisure, *Nat. br.* 91. *B.* for the same reason, as it seems.

But *quere*, 16 *Eliz.* *Dyer* 338. *pl.* 40. for the 21 *Edw.* 4. 16. *pl.* 7. it seems he may not. 2

For taking an Estray, *Regist. orig.* 100. *B.* the Estray Count, *Lib. Intra.* 638. *B. sect.* 1.

Without seisure, *Nat. br.* 91. *B.* as before.

Tamen quere, for the 12 *Hen.* 8. 10. *è contra*, *quere* 20 *Hen.* 7. 1. 2

The Count, *Lib. Intra. 638. B. Sect. 1.* is without seizure, and by that, it seems, there needs no seizure. *Q.*

Felons
goods.

For taking Felons goods, *Regist. orig. 101. A.* which belong not to him.

Felons goods within a Hundred, where the Lord hath Felons goods; if the Sheriff takes them, the Lord shall have *Trespass*, *Nat. br. 91. F.* for the Sheriff hath no warrant to take them.

Fair or
Market.

For disturbing a Fair or Market, *Regist. orig. 103. A. & B.* for this is to the prejudice of the Lord thereof.

Frank-
foldage.

For breaking and hindring of the Foldage of the Lord, *Regist. orig. 103. A. Nat. br. 91. H.*

Chattels
Real.

Competit etiam Domino actio indirecta, quatenus sua interfuit non caruisse servitiis famulorum, & operibus servorum & huiusmodi, Bracton Lib. 3. fol. 115. A.

Son.

For taking away his Son and Heir, and marrying him, *Nat. br. 90. H. 29 Assize 35. 3 Edw. 4. 12. B. Danby, 21 Hen. 6. 14. pl. 29. Nat. br. 143. R.* for this is to the prejudice of his Family.

The Writ is, *quare filium & heredem*, and yet he is not heir during his life, *8 Edw. 3. 2. Trespass 235.* The Law intends it is meant, *filium & heredem suum apparentem.*

Daughter.

For taking away his Daughter, and marrying her, *Regist. orig. 98. B.* for thereby he loseth his Fatherly interest in his Child.

Heir.

Heir, *Regist. orig. 99. A. Coke 3. part. 38. Ratcliff's case, 12 Hen. 4. 16. pl. 9. Consanguineum & heredem suum rapuit, Nat. br. 143. R. 30 Edw. 3. 6. pl. 7. & fol. 15. pl. 19.*

And

And needs not mention that he is within age, because he shall have his marriage, &c. 32 *Edw. 3. Gard* 32. be he within Age, or not.

For taking away a woman *cum bonis viri*, upon the Statute of *Westm. 2. cap. 34. Nat. br. 89. O. 6 Edw. 3. 208. pl. 2. 14 Hen. 6. 2. pl. 11. the Count, Lib. Intra. 662. C. sect. 1.* Woman.

And this lies, although they are divorced, before the Action brought, if the *Trespass* was done before, and also in respect of the goods taken away, which belong to the Husband notwithstanding the divorce, 43 *Edw. 3. 23. pl. 15. 4 Affize pl. 13.*

For Assault, Battery, and Wounding, the Count, Battery. *Lib. Intra. 668. C. Sect. 4.*

For Imprisonment until fine be made, 6 *Edw. 3. 208. pl. 2.* Imprisonment.

For threatening my Servant, *per quod Servitium amisit*, *Regist. orig. 94. B.* for there is apparent damage. Servant.

The Plaintiff needs not count upon the Retainer; for the Law supposeth it, and if he be not retained he may plead *non culp.* 21 *Hen. 6. 31. pl. 18. 22 Hen. 6. 30. B. & 43. B. 31 Hen. 6. 12. pl. 2.*

Assault and Battery of his Servant, *per quod Servitium amisit*, *Regist. orig. 102. A. Nat. br. 91. I.*

The Count, *Lib. Intra. 613. B. Sect. 19. 674. C. Sect. 1.* he ought to say by which he lost his Service, *Coke 9. part. 113. A. 18 Edw. 4. 27. pl. 24. 2 Hen. 4. 12. pl. 49. 20 Hen. 6. 14.* and there it was *quod Servitium amisit*, and good without this word [*per*], for *quod* implies it without *per*; he beat him that he lost his Service.

Battery, Mayheme and Imprisonment, *per quod*, &c. Trespasß lies; *Crooke 7 Hen. 8. 80. pl. 4.*

If the Count be not *per quod Servitium amisit*, although that Verdict pass for the Plaintiff; yet he shall never have Judgment, *21 Hen. 7. 71. pl. 15. Crooke*; for there appears no damages by the Plaintiffs shewing.

For enticing my Servant to depart, *Trespasß* lies not, but an Action upon the Case, *11 Hen. 4. 3. pl. 46.* for here is no *vi & armis* in the case, as all Trespasßes do imply.

Apprentice.

For taking away his Apprentice, *Regist. orig. 109. A. per quod, &c.* Q. whether he need to count so, for it seems it must be so intended.

Prisoner.

For a Goaler for taking away his Prisoner, *Regist. orig. 104. A. 4 Edw. 4. 6. pl. 7. ante.*

Captive.

For taking his Captive from him, *Regist. orig. 95 A. 102. B. Nat. br. 88. A.* Q. what Captive, whether one taken in the Wars.

Chattels
personals.
Living.

Si quis distringit ordine non observato facit transgressionem, *Bracton Lib. 4. fol. 217. A.* for the Law requires regularity and order in doing of things.

Trespasß *quare Averia cepit, & abduxit*, *Regist. orig. 97. B.*

The Count, *Lib. Intra. 628. B. Sect. 1. 670. B. sect. 1.*

Note, for live Cattel the Writ shall be *cepit & abduxit*, *Nat. br. 88. B. 21 Hen. 6. 39. pl. 5. 12 Hen. 8. 9. B.* if dead *cepit & asportavit*.

And the Writ for live Cattel shall be *Averia sua*, or shew the thing in certain, *21 Hen. 6. 39. pl. 5.*

And

And if the thing be dead or alive, it is not material whether the Writ be *pretii seu ad valentiam*, Nat.br. 88. L. 2. for it alive, it seems it should be *pretii*; if dead, *ad valentiam*.

For taking away his Boar, *Regist. orig.* 110. Boar.
B.

For taking away his Oxen, *Regist. orig.* 110. Oxen.
B.

For taking away his Mastiff, *Coke 7. part.* 18. Mastiff.
A. 12 Hen. 8. 3. *Regist. orig.* 109. *A.* but he shall not say *pretii*, or *ad valentiam*, because a Dog is not a Marketable creature, though valuable to the Owner, 12 Hen. 8. 5. *A. Elliot*, *Regist. orig.* 109. *A.*

For taking away his Capons, the Writ was *bona Capons. & catalla*, and good, 17 Edw. 3. 41. pl. 19. for they are general words, and extend to all manner of goods proprietary whatsoever.

For taking away his Conies out of his Close, Conies.
the Writ shall be *suos*, Nat.br. 87. *A.* *Regist. orig.* 93. B. 102. *A.* for the Owner of the Close hath a property in them. *Quere*, if not tame Conies.

So if it be in a Park, *Regist.* 110. B. because he hath a property in the game, in respect of the enclosure.

But if it be for entering into his Warren, and taking his Conies, he shall not say *suos*, for he hath them but *ratione privilegii*, viz. of hunting them, 3 Hen. 6. 55. pl. 34. *Regist. orig.* 110. *A.* *Coke 7. part.* neither shall he declare of the value, 8 Edw. 4. 5. pl. 16. *Lakin. Quere differentiam.*

The

The Writ was, *Quare Warrennam intravit, & cuniculos cepit & asportavit*, without saying *ibidem*, and yet good, 43 *Edw.* 3. 13. pl. 7. for it shall be intended that he took them there where he entred; for the Conjunction *Et* couples all together.

If Conies go out of a Warren, any may kill them in his own Land, and no Action lies, *Coke* 5. part 104. 43 *Edw.* 3. 13. pl. 7. For they cannot be said to have *animum revertendi*, and so the property is gone.

Deer.

Deer if they be tame, he shall say *suas*, but then he ought to shew that they were tame, 43 *Edw.* 3. 24. pl. 2. For if he declare generally, it shall not be intended that they were tame; for tame Deer is but a rarity, and not usual.

But if it be in a Park or Chase, he shall not say *suas*, because he hath them but *ratione privilegii*, viz. of the place where they are so long as he can keep them there, which is uncertain.

Hawks.

For taking away young Hawks, he shall say *suos*, because he hath a property possessory in them; for he might have taken them when he pleased, *Coke* 7. part. *Regist. orig.* 93, B. 96. B. 110. B. *Nat. br.* 89. K.

So if they be reclaimed Hawks, that is, Hawks made tame or managed, which were wild before.

For taking away a Horse, *Regist. orig.* 95. A. *Nat. br.* 87. M. the Count; No. *Lib. intra.* 666. B. *sect.* 15. *Lib. intra.* 682. D.

Fish.

For his Sheep taken away, *Regist. orig.* 110. B. For taking his Fish, this is good, although the Count be of a hundred Fishes, because this word

word *Piscis*, est nomen collectivum, 4 Hen. 6. 11. Coke. 5. part 35. 21 Hen 6. 39. and comprehends any number, as well as one Fish.

But the Count ought to shew the nature and number of the Fishes particularly, Coke 5. part 35. 31 Hen. 6. 39. though the Writ be general, that the damage may be known.

De tanro suo libero, Regist. orig. 109. A.

Bull.

Oves fugatas per quod morierunt, Lib. intra. 616. B. sed. 1. Nat. br. 89. L. Regist. orig. 97. A.

Oves capte
& fugate.

Porcos fugatos per quod interierunt, Regist. orig. Hogs. 97. A. Nat. br. 89. L.

There he shall say the price, where he declares of a taking, because *Cepit* implies that he had gained a property; but it is otherwise, if this word be put out, 1 Hen. 5. 3, 4.

Capta, fu-
gata &
imparcata.

But Regist. orig. 97. B. fuit, *Cepit* & *abduxit*, without shewing the price of them, and good, because it may be he was seised of the Cattel.

Cepit in S. & interfecit at W, contra pacem, *Capta & c.* is nought, because *Cepit* implies a property, and then *contra pacem* is not good; for he might kill them, if they were his own, 27 Assize 64.

Averia ad loca incognita fugata, upon the Stat. *Districla* of Marlebridge, cap. 4. Regist. orig. 97. A. 102. A. 30 Assize, 38. Nat. br. 89. N.

De Com. in com. & ibidem imparcata, upon the Stat. of Marlebridge, cap. 4. Westm. 1. cap. 16. 1 & 2 Maria, cap. 12. Regist. orig. 97. B. 1 Eliz. Dyer. 168. pl. 20. 2 Eliz. Dyer, 177. pl. 32. Nat. br. 89. P.

And there are two causes of bringing this Action. 1. He cannot give them Meat. 2. They cannot

cannot

cannot be replevied, 22 *Edw.* 4. 11. 2. For he might lose his Cattel, and have no remedy, if he might not have this Action of Trespafs.

Note.

Note, upon these cases upon the Statute, the Writ shall not be general, but special, upon the Statute, 43 *Edw.* 3. 30. *pl.* 16. as it is usual in all other such like cases.

The Action was of a Cow, the Count, *Lib. intra.* 464. *C. Pound.*

For *Marlebridge*, cap. 4. saith *districiones*, but not upon 1 & 2 *Mariae*, cap. 12. for the Statute saith Cattel, and upon the second branch it lies well, because it is there Cattel or Goods.

The Count was of taking in one County, 1 *Eliz. Dyer*, 168. *pl.* 20.

In this Action the place of the taking is material, because the distance of the place of impounding makes the offence, 7 *Eliz. Dyer*. 238. *pl.* 33.

But if Land in one County be held of a Mannor in another County, the Distress belongs to the Mannor, and may be impounded there in the Lords Pound, 1 *Hen.* 6. 3. *pl.* 9. 30 *Edw.* 3. 6. *Com.* 204. B. 14 *Edw.* 3. 275. 22 *Edw.* 4. 11. 6 *Hen.* 3. *Avowry*, 242. *Crooke* 18 *Hen.* 7. 50. *pl.* 3.

If the distress be put in several Pounds within the same County, this is out of the Statute, unless they are put in several Franchises, otherwise the party needs not put in several Replevins, *Mich.* 37 & 38 *Eliz. Partridges case. per Anderson*; because it is but as one impounding.

Trespafs lies for *Averia districta extra fedum*, upon *Marlebridge*, cap. 15. *Westm.* 1. cap. 16. *Articuli*

ticuli Cleri, cap. 9. *Regist. orig. 97. B. Coke. 8. part 60. B. Nat. br. 90. A.*

Note, *Non dicitur simul in uno brevi Regia via & extra foras*; for there should be two Writs; *Regist. orig. 97. B. in nota.*

In communi strato upon *Marlebridge*, cap. 15. *Regist. orig. 97. B.* although that it be within his fee, 17 *Edw. 3. 43. pl. 31.* Trespafs lies. 2. whether a common street or way be within the Lords fee properly, though it lie within his Mannor.

This Writ is *contra pacem*, because against the Statute, and not *vi & armis*, 17 *Edw. 3. 1. pl. 2.* 2. For it is not against the common Law.

For excessive distress upon the Statute of *Marlebridge*, cap. 4. Trespafs lies.

Averia districta per Ballivum non jurat. upon *Westm. 1. cap. 17.*

Averia Caruce upon the Statute, 21 *Edw. 1. Regist. orig. 97. B. Nat. br. 90. B. 14 Eliz. Dyer. 312. pl. 86.*

The Writ is *contra pacem*, and not *vi & armis*, 17 *Edw. 3. 1. pl. 2.* because upon the Statute.

The Count needs not shew that the Distress should be reasonable, but shall say generally, *contra formam Statuti*, 14 *Eliz. 312. pl. 86.* For that implies it is unreasonable.

This Action lies, although that agreement be made, 4 *Edw. 3. 1. pl. 2.* For the Statute cannot be dispensed with by the agreement of the parties.

Oves districtas upon Statute 21 *Edw. 1. Bracton, fol. 217. Regist. orig. 97. B. Nat. br. 90. B.*
But

But if there be not other Cattel on the Land, at the day that the Lord comes to distrain, he may distrain the Sheep, 29 Edw. 3. 16. pl. 48. else he should be without remedy.

Catalla districta quousque finem fecit, Nat. br. 87. C. The Law hates fraud and violence.

*Impercata
Catalla.*

Averia impercata, per quod terra remansit inculta, Nat. br. 88. f. viz. Beasts of the Plough, which is against the common good.

Equo impercato & mortuo sine alimento, Regist. orig. 94. B. This must be of a private impounding, or in a Pound close.

For if they die in a Pound overt, the party had no remedy, 46. Edw. 3. 3. pl. 4. For he might have come to feed them.

But if it be a Pound close, he shall have trespass, 46 Edw. 3. 3. if the Cattel die; for he could not come to feed them.

*Percussa
Catalla.*

Equo percusso, the Count, Lib. intra. 614. A. sect. 22.

Equo percusso per quod the Master is hurt, Regist. orig. 96. B. Nat. br. 89. E. Q. whether a double Action lies not.

Tonsa Catalla.

Oves tonsæ, Regist. orig. 96. A. Nat. br. 88. O Bracton, Lib. 3. fol. 102. B. *Si quis rem mobilem vendicaverit ex quacunque causa ablatam, vel commodatam, debet in Actione sua definire pretium, & sic proponere actionem suam, quia ille à quo res petitur non tenetur præcisè ad rem restituendam, sed sub disjunctione, vel ad rem, vel ad pretium.* The cause why the value must be expressed, is here shewed.

*Chatrel's
dead.*

The Writ for dead Cattel, shall be *Bona & Catalla ad valentiam*, 21 Hen. 6. 39. pl. 5.

But

But if it be but one thing, it shall not be *Bona & Catalla*, 22 Edw. 4. 12. pl. 32.

But shall name the thing it self, *Crooke* 12 Hen. 7. 35. pl. 1.

The Writ for dead Cattell shall be *Cepit & asportavit, ad valent.* Nat. br. 88. B. 21 Hen. 6. 39. pl. 5. For live Cattell *cepit & abduxit pretii*.

Wool distrained until C and D oblige themselves to make deliverance, 43 Edw. 3. 6. pl. 18. the Writ is 1. *Vi & armis*, and good. 2. *Ad dampnum*, &c. 3. The value is not shewed, yet good, because it is not in demand. Arrestata. Wool.

Arrested *quousque commodum perdidit*, &c. Regist. orig. 102. A. 105. A.

Argentum cepit & asportavit. Regist. orig. 108. B. 110. A. Nat. br. 87. M. 34 Hen. 6. 10. pl. 21. Capta & asportata,
2 Edw. 4. 26. shall not say *pretii*, Regist. orig. 102. B. 108. B.

For the Money comprehends the value, 46 Edw. 3. 16. pl. 12. per *Monbray*. 46 Edw. 3. 10. pl. 1. Money.

For Money out of a Chest, the Count, *Lib. intra*. 614. A. *señ*. 1.

Auri tot Florenos, there it shall be said *pretii*, Regist. orig. 102. B. because they are outlandish Coin, and not current in England.

Bona capta & asportata, the Count, *Lib. intra*. 615. D. *señ*. 3. 681. C. *señ*. 3.

If one puts his goods in my house, and I will not deliver them, Trespafs lies not, but a detinue. Q. for it was his folly to put them there. *Mich.* 40 & 41 Eliz. com. Ban. *Briton versus* the Countess of *Sbrensbury*, but if I remove them, or seize

feize them to my use, it lies; for then I do in a sort dispose of them.

Coles. *Carbones maritimos asportat. Regist. orig. 94. A. Nat. br. 87. B.*

Plough & Horse. *Carucam & equos capt.*

The Count, *Lib. intra. 607. C. sect. 1.*

Carucam capt. ad cariad. upon Westm. 11. cap.

Writings. *1. Regist. orig. 98. A.*

For taking away Writings in a Box, *Regist. orig. 110. B. 106. B.*

The Count, *Lib. intra. 616. B. sect. 1.*

For taking away Deeds, Minuments and Writings, *Regist. orig. 111. A.*

For breaking open a Chest, and taking away Deeds, *36 Hen. 6. 26. pl. 26.*

For taking away a Chest, *Regist. orig. 110. B.*

Hay. For taking away Hay, *Regist. orig. 102. B.*

Corn. For taking away *Frumentum*, the Writ was *Bona & Catalla*, and good, *46 Edw. 3. 16. pl. 12.* For *Frumentum* is Chattels.

Timber. Timber and Wood *capt. & asport.* the Count, *Lib. intra. 676. A. sect. 7.*

Ship. *Navem capt. & abduct. Regist. orig. 95. A. 102. B. Nat. br. 87. I. viz. intra corpus Comitatus,* and not *super altum mare.*

Navem capt. ad faciend. cariag. upon the Statute of *Westm. 1. cap. 1. Regist. orig. 98. A. Nat. br. 90 C.*

Obligati- *Scriptum obligatorium* delivered in nature of on. an Acquittance, *5 Hen. 4. 2. 1 Hen. 7. 14. 3 Edw. 3. 72. pl. 1.*

Will. *Testamentum abstulit & asportavit, Regist. orig. 107. B.*

Coat. *Tunicam, sc. a Coat Armor, 9 Edw. 4. 14. pl. 8.*

Five

Five Tuns of Wine, the Writ was *bona & ca-* Wine.
talla, and good; Wine taken and carried away,
 39 Edw. 3. 18. pl. 17. *Lib. intra. 684. A. sect. 1.*

The Count *Lib. intra. 684. A. sect. 1.*

Vestimenta, 11 Hen. 4. 31. pl. 57. Q. whether Cloaths.
 he must not shew what.

Trespas, *Quare spinas suas crescent. cepit &* Thorns.
assortavit ad valen. &c. Good without shewing
 the number of Loads; for this is special, and the
 value reduces it to a certainty, *Mich. 15. Jac.*
Ban. Regis, Jones & Wilson.

But if it be *quasdam garbus tritici*, it is not good, Shocks of
 for the uncertainty what is meant by *Garbes, Trin.* Wheat.
 7 Jac. *Ban. Regis.* For it seems a Garb may be
 more or less.

Error is either by

- ## 2. Agard.

3. Other Record.	} Fine: Grant of the King	} 4. Custom.	Execution. 1. London: 2. Cinque ports. 3. In any Village. 5. Common Right. 1. Pypowders in Fair or Market: 2. Marshalsey, <i>Coke</i> . 10 <i>part</i> 69. B. 3. Tourne. 4. Lect.

Westm. 1, 2. *cap.* 30. upon a Bill of exception:

5 *Edw.* 3. *cap.* 2. Error in Marshalsey, Redress in *Ban. Regis*.

9 *Rich.* 2. *cap.* 8. He in Reversion, his Heirs or Successors shall have Error upon Judgment against Tenant for life, &c. and by equity he in Remainder.

34 *Hen.* 8. *cap.* 16. Error upon Judgment before the Justices in the grand Sessions in *Wales*, shall be redressed in *Ban. Regis* in *England*, if it be in plea real or mixt: but for personal matters, it was to be redressed before the President and Council in *Wales*.

23 *Eliz.* *cap.* 3. False Latine, rasing, interlining, mis-entring of a Warrant of Attorney, or Proclamation, Mis-return, or not Return of the Sheriff, or fault of form in words shall not be Error in Fine or common Recovery.

27. *Eliz.* *cap.* 9. ordains, that this Statute of the 23 *Eliz.* *cap.* 3. extends to Fines and Recoveries in *Wales*. Ff 2 27

27 *Eliz. cap. 8.* Judgment given in *Ban. Regis*, shall be redressed before the Judges of the Common Pleas, and Barons of the Exchequer, but then it ought to be in Debt, Detinue, Account, Covenant, *Ejectione firme*, Trespass, Action upon the Case, and there shall be nothing assigned in the Jurisdiction of the Court, or in form in a Writ returned, Plaint, Bill, Declaration, Pleading, Process, Verdict, or Proceedings.

31 *Edw. 3. cap. 12.* Error redressed in the Exchequer-Chamber before the Chancellor and the Treasurer, calling to them the Barons of the Exchequer and Justices.

31 *Eliz. cap. 1.* The not coming of the Chancellor shall not make a Discontinuance of the Error in the Exchequer-Chamber.

And for Error therein sued upon a Judgment in *Ban. Regis*, three of the Justices or Barons may adjourn it, and it shall be no discontinuance.

Error.



Error.

In what Court Error shall be redressed.

Judgment given in *Ban. Regis* in *Ireland*, Error lies in *Ban. Regis* in *England*, 15 *Edw.* 3. Error 72, 37 *Affize* pl. 7. 5 *Edw.* 2. Error 89. 36 *Affize*, 3. *Nat. br.* 22. *E. Coke* 7. part 18. *Calvins A. case.* Upon Judgment in Court out of the Realm. *Ireland.*

But not upon a Judgment given in another Court in *Ireland*, 5 *Edw.* 2. Error 89. *Nat. br.* 22 *E.* but they shall be, as it seems, reversed in the Kings Bench there, if they be erroneous, and not trouble the Kings Bench here.

Erroneous Judgment in *Wales* shall not be redressed in *Ban. Regis* in *England*, because *Wales* was not parcel of the Crown of *England*, 27 *Hen.* 7. 33. pl. 32. but a Principality of it self belonging to the Crown. *Wales.* Dodderidge, *De Principallitate wallie* fol. 18.

But *Crooke* 11 *Hen.* 8. 202. pl. 19. *è contra*; for there it is said it is parcel of *England. Q.*

But in Parliament this ought to be reversed, 19. *Hen.* 6. 12. *Afcue.*

And also before Justices itinerant there, 19 *Hen.* 6. 12. *Newton*, viz. in *Wales.*

But at this day Judgment given at the Grand Sessions in *Wales* in a plea real or mixt, shall

be redressed in *ban. regis* in England. per Statute 34 Hen. 8. cap. 26.

But in plea personal it shall be redressed before the President of the Council in *Wales* by Bill exhibited before him.

But Judgments given in the Assizes in *Wales* cannot be redressed in *Com. Ban.* here, 8 Eliz. Dyer. 250. 87.

Isle of
Man.

Erroneous Judgment given in the Isle of *Man*, may not be redressed in *England*, because it is not parcel of *England*, Crooke 11 Hen. 8. 202. pl. 19.

2. Within
the Realm
in Court
superior,
as Parlia-
ment, *Ban.*
Regis.

Upon a Judgment given in *ban. regis*, Error lies in the same Court per Common Law, if it be upon Error in Process, or default of Clerks, *Nat. br.* 21 I. 7 Hen. 6. 28. pl. 22. 19 Hen. 6. 2. pl. 2. 15. Edw. 4. 7. & 8. 3 Eliz. Dyer 196. pl. 39. 27 Hen. 8. 15. B. Knightsley.

But if it be Error in Law, which is the fault of the Justices, it shall not be redressed but by Parliament per Common Law, *Nat. br.* 21 I. 9 Edw. 4. 3. 3 Eliz. Dyer 196. pl. 39. & 201, pl. 64. 23 Eliz. Dyer 374. pl. 19. 27 Hen. 8. 25. B. Fitz-James. For they shall not reverse their own Judgments.

But Error in process or default of Clerks ought to be reversed in the same Term, or otherwise it lies not in the same Court, as it seems by the Justices, *Trin.* 7. Jac. *ban. regis*, *Prowse & Skeyner.* Q.

But one case was *Mich.* 41 & 42 Eliz. Rot. 639. which is a rule that Error lies in another Term upon Error in Process, when the party cannot have Error in the Exchequer Chamber.

But

But by the Stat. of 27 Eliz. cap. 8. if Judgment be given in *ban. regis*, upon a Suit commenced there, the Writ of Error lies in the Exchequer-Chamber, before the Iustices of the Common Ban. and Barons of the Exchequer, or six of them, *Coke 3. part 7. B. 4. part 53 & 86. A. 5 part 18. B. 28. A. 43. A. 97. B.*

But then it ought to be in Debt, Detinue, Account, Covenant, *Ejectione firme*, Trespas upon the case, and no other Actions, for the Stat. shall not be largely expounded.

And also nothing shall be assigned for Error in the jurisdiction of the Court, or form of the Writ, Return, Plaint, Bill, Declaration, Pleadings, Process, Verdict, or Proceedings; but only in matter in Law.

And also a Writ of Error lies upon this in Parliament, *viz.* upon a judgment given in the Kings Bench.

Judgment given in Chancery, according to the Common Law, that is, on the Petty-bag side, shall be redressed in Parliament, 37 *Hen. 6. 13. 11 Edw. 4. 8. Coke*. So it seems of a judgment in the Exchequer-Chamber.

Or in *ban. regis*, 14 *Eliz. Dyer 315. pl. 100.* and so it seems 37 *Hen. 6. 13. 8 Edw. 3. 25. 17 Affize pl. 24. com. 393. A. 39. Affize 18.*

And in case of Partition one *Scire facias* was brought in Chancery upon Error, and good, 42 *Affize 22.*

If Letters Patents are enrolled in Chancery, there shall be a *Scire facias* to reverse it there, 16 *Edw. 3. bre. 651. 2 Rich. 3. 1. A. if erroneous.*

But another Subject upon this being grieved, shall have this redressed in Parliament, 16 *Edw. 3. bre. 651. 37 Hen. 6. 13.*

But no Writ of Error lies altogether upon a Decree in Chancery, because in their proceeding the Court is not a Court of Record, 37 *Hen. 6. 13. 27 Hen. 8. 15. Ruighley.* but meerly arbitrary.

Com. Ban.

A Judgment given in *com. ban.* if it be erroneous in Process, or in default of Clerks, it shall be redressed in the same Court the same Term, without a Writ, *Nat. br. 21. I. 15 Edw. 4. 7. & 8. 7 Hen. 6. 28. pl. 22. 19 Hen. 6. 2. pl. 2. viz. upon a motion at the Bar.*

But for Error in Law in the same Term, or other Error in another Term, this shall be redressed in *ban. re. only*, *Nat. br. 21. I. Coke 8. part. 5. A. 5 Marie, bre. commission 25.*

It shall not be redressed at the Council-Table, 39 *Edw. 3. 14. pl. 28.* For that is not a Court of Law, but of State.

Exchequer.

Judgment given before the Barons of the Exchequer, shall be redressed in the Exchequer-Chamber before the Chancellor of England, Treasurer, Barons, and Justices, 31 *Edw. 3. 12. A. 37 Hen. 6. 15. 8 Hen. 7. 13. pl. ult. com. 260. B. Coke 1. part. 11. 34. 3. part. 11. B. 8. part. 58. A. 65. B. 15 Edw. 4. 18. 39 Hen. 6. 52. 6 Hen. 7. 15.*

Inferior Court.

The Statute of Merton, cap. 3. makes the Sheriff Judge of Record in rediffetin, and Error lies upon a judgment given by him in *ban. regis*, *Coke 6. part 12. a Gentlemans case.*

Judgment

Judgment given at the Assizes in the County, shall be redressed in *ban. regis*, 33 *Edw. 3. Verdicti* 48. 7 *Eliz. Dyer* 235. pl. 21. 23 *Eliz. Dyer* 375. pl. 19. 2 *Rich. 3. 1. pl. 1. 10. Assize* pl. 25.

Or in *Com. Ban. Nat. br. 25. E.*

But judgment given at the Assizes in *Com. Month*, shall be redressed only in *ban. reg.* and not in the *com. ban.* because the other Iustices at the Assizes are by Letters Patents, 8 *Eliz. Dyer* 250. pl. 87. and if the Assizes be adjourned in *com. ban.* and judgment given there, it shall be redressed in *ban. regis*, 8 *Hen. 6. 17.*

And if judgment be given at the Assizes in a *Quare Impedit*, Error lies in *ban. regis*, 6 *Edw. 6. Dyer* 76. pl. 34.

But judgment given at the Assizes, shall not be redressed at the Council-Table, 35 *Edw. 3. 14. pl. 28. vid. antea rationem quare non.*

Upon Commissions of Oyer and Terminer by Iustices of the Peace, the judgment given by them shall be redressed in *ban. regis*, 29 *Edw. 3. 30. 5 Mariae, brev. Commissions* 25. Oyer and Terminer.

But Error lies not upon a thing done before the Iustices of the Peace, 4 *Hen. 6. 24. Martin.* For such things are not accounted judgments, but may be rectified in some cases upon a motion made to that power.

But Error was brought upon an Outlawry, upon an Indictment taken before Iustices of the Peace, 11 *Hen. 4. 53.* For an Outlawry is a kind of a judgment given by the Coroner, though the Indictment pended before them.

Con-
sance
granted to
a City or
Village
corporate.
Judgment

Consuance of pleas granted to a City or Village corporate, their judgment shall be redressed in *Ban. Regis.*

Or to a Body Natural, and not Corporate; for such are judgments upon pleading.

For a judgment in *Chester* Error lies in *Ban. Regis*, *Coke* 2. part 89. B. 19 Hen. 6. 12. 6 Hen. 4. 8. pl. 30.

Note.

But note, in a Writ of Error upon a Judgment given in *Chester*, day shall be given for so long time that three Counties may be held there, before the return of the Writ in *Ban. Regis*, within the which time the Justices or Lieutenant of the same County may redress the Error by the usage of the said County, *Regist. orig.* 17. A. if they please.

But in a Writ of Error upon a Writ of Error depending there, they have no such power; but the Record and the process ought to be remanded at the first County or Court into *Ban. Regis*, *Regist. orig.* 17. A. *Lib. intra.* 290. A. *scd.* 1. *Chester.*

And by usage in the same County of *Chester*, nine County-Courts shall be held one year, and eight another year, &c. *Regist. orig.* 17. A.

The usage is to have a Writ out of the Chancery returnable in *Ban. Regis*; for Writs of Error are excepted in the Charters granted to *Chester*.

And in this Error there, the Justices may award a *Scire facias* against the Defendant, returnable at the next County, and if the Judgment be affirmed, the party may have a special Writ of Error, reciting the former Writ, and have

have the Records and Proceſs of both Judgments removed in *Ban. Regis*, there to be examined, and a *Scire facias* awarded againſt the Tertenant *ad audiendum errores*; for otherwiſe the party ſhall not be reſtored to that which he loſt, 15 *Eliz. Dyer* 321. pl. 20. 21 *Hen. 7.* 34. pl. 32. *Finenx*, 34 *Hen. 6.* 42. 6 *Hen. 4.* 8: pl. 36. *Lib. intra.* 290. B. ſed. 1. *Cheſter*.

And by 18 *Eliz. Dyer* 345. pl. 6. if the judgment be reverſed, the party ſhall be reſtored, and the Judges there forfeit to the King 100 *l.* although the Judgment was given by their Predeceſſors.

But then it is not intended of Error in fact, but only of Error within the Record or Proceſs, *No. Lib. intra.* 231. A. ſed. 2.

Upon a Claim allowed by the Juſtices of the Foreſt. Foreſt. Error lies upon it in *Ban. Regis*, 21 *Edw. 3.* 48. pl. 70. For ſuch Allowance is a Judgment in its nature.

If eroneous Judgment be given in the Stannaries, it ſhall be redreſſed firſt before the Warden of the Stannaries, and after, before the Council of the Prince, and after, before the King himſelf, as ſupream Judge. It ſeems at the Council-Table, and not in the Kings Bench. Stannaries

Pafch. 7. Jac. Regis. per Flemming chief Juſtice, a Writ of Error or falſe judgment lies not upon judgment given in the Court of the Stannaries, as was reſolved by all the Juſtices: and it ſeems the reaſon is, becauſe it is but an Engliſh Court, and not a Court of Record.

Judgment

Judgment in the County Palatine of *Durham* shall be redressed by a Writ of Error there, and upon Error in this second judgment, Error lies in *Ban. Regis.*, or in *Com. Ban. Nat. br.* 21. *G. 14 Edw. 3. Error 6. 8 Eliz. Dyer 250. pl. 86.*

Custom.

Judgment in *London*, viz. before the Mayor, shall be redressed in *Com. Ban.* or *Ban. Regis, Nat. br.* 20. *E. 23. A. & B.*

London.

But a judgment before the Sheriffs of *London*, shall be redressed before the Mayor and Aldermen in their Hustings, *Nat. br.* 22. *H.* which is the highest Court.

And judgment before the Mayor and Sheriff, shall be redressed by Commission directed to certain persons at *St. Martins the Great*, *Nat. br.* 23. *E. 18 Edw. 3. 8.*

But by 34 *Hen. 6. 42. pl. 14.* the Mayor and Aldermen have forty days to advise of their judgment, and then the Recorder certifies it forthwith, if they do not reverse it.

Note.

Note, this manner of proceeding is given by the Stat. of 28 *Edw. 3. cap. 10. scil.* that the error shall be redressed within the City; and if they do not redress it, then there shall be a commission; and if error be found, they shall forfeit to the party his treble damages, and to the King 1000 Marks, &c. but by the 1 *Hen. 4. cap. 5.* their Fine is at the discretion of the Commissioners.

Cinque-ports.

Judgment given in the Cinque-ports, shall not be redressed in *com. ban.* or *ban. regis*, but only by the Warden of the 5 Ports, at the Court at *Shepewye*, & si falsum fuerit revocatur, & Major & Jurati qui dederunt Judicium

cium fecerint fines & Major deponetur ab officio,
23 Eliz. Dyer 376. pl. 23.

The Writ to the Cinque-ports shall be directed *Custodi quinque portuum*, vide 30 Hen. 6.6. Pole.

But 30 Hen. 6. 6. the Barons of the five Ports are Judges there.

Upon a Custom in Village or Town to hold in Village.
all manner of Pleas, and a judgment thereupon given, error lies in *ban. regis*, 21 Edw. 3. 40. 37 Affize pl. 5. Nat. br. 20. D. 2 Hen. 7. 19. pl. 4. 18 Edw. 4. 12. Mich. 10 Jac. *ban. regis*, Godson versus Duffield.

Or in *com. ban.* Nat. br. 20. D.

Judgment in the Marshalsey shall only be redressed in *ban. regis*, per 5 Edw. 3. cap. 2. 10 Edw. 3. cap. 3. Lib. intra. 297. *coram ipso rege*. Common right. Marshalsey.

Judgment in Court of Pypowders shall be redressed in *ban. regis*, or *com. ban.* Nat. br. 20. D. Pypowder

Who shall have a Writ of Error.

He that confesses the Action shall not have a Partic.
Writ of error against his own confession, Nat. br. 21. K. 34 Hen. 6. 41. For he hath lost all that advantage by his confession.

Conusor of a Statute shall have a Writ of Conusor.
error if execution be not well sued out against him, 18 Edw. 3. 25. for to overthrow the execution.

And although he were outlawed (if he be pardoned) for then he is enabled again to sue. 29 Affize 47. Nat. br. 22. B.

A

Corpora-
tion.

A Corporation shall have a Writ of Error jointly for a judgment given against them, but no single person of them, 21 *Edw.* 4. 58. *Townesend.* For they are all but one body, and cannot sever, nor be severed in pleading, or in being impleaded.

Disclaim.

He that disclaims shall not have it, *Nat. br.* 22. *C. Coke.* 8. part 6. B, & 62. *A. viz.* the thing sued for, whereupon judgment is given.

Non-Te-
nure.

But if one plead *Non-Tenure*, and it be found against him, yet he shall have it, 6 *Edw.* 3. 188. pl. 17. *Nat. br.* 22. C. For that is but a plea to the Action.

A brought a *Præcipe* against *B*, who incoffs *C*, judgment is given for *A*, yet *B* shall have error, 21 *Edw.* 3. 53. 12 *Affize* 41. 20. of *Affize*, 2. 50 *Affize* 3. *Coke* 1. part. 111. *Albanies* case; because the judgment is against him, and not the *Feeoffee*.

Judgment was given against the Defendant in debt, and after, because he paid it not, nor rendred his Body, &c. judgment was given upon a *Scire facias* against the Bail, and they all join in a Writ of error, and therefore held not good, because one of them is not party to the judgment given against the other, *Mich.* 9. *Jac. Regis, Wildgoose* against *Duport*; but they are distinct and several judgments, given against them severally, and ought to have several Writs of error.

Trespas against two, where one was within age, and appears by Attorney, and judgment *Quod capiantur*, they join in a Writ of error, be-
cause

cause the judgment is entire, *Hyl. 9. Jac. Ban. Regis, Orme & Bird*; and good, though the judgment was well given against one of them.

Surviving joint-tenant shall have error of all Survivor. the judgment given against both; for he is only now concerned, *19 Edw. 3. Error 1. 19. Assize pl. 8.*

Two outlawed upon a *Capias* in Redisseisin Outlawed. with force, one shall have error sole, *8 Hen. 4. 3.* For the Outlawry is as two Outlawries, viz. against each one of them particularly.

Judgment against two in conspiracy, one dies, the other shall have a Writ of error, *24 Edw. 3. 76. pl. 99.* else it would be mischievous to him, if the judgment be erroneous, if he may not reverse it. Conspiracy.

Mich. 30, & 31 Eliz. ban. regis, Pigot being an Infant, and another levies a fine, *Pigot* sole brought error, and good; for this is error in fact, therefore it shall be brought by him it most concerns, which here is the Infant. Infant.

If one makes a *Retraxit*, viz. upon the Roll, that he will not proceed, yet he shall have error, *Coke. 8. part 62. A. Beechers case.* For the *Retraxit* was but till the judgment. Retraxit.

The King shall have error, *15 Edw. 3. Error 72.* and that is but reasonable. Reversion.

He in reversion disseises two joint-Tenants for Life, and suffers an erroneous recovery, the wife releases with warranty, and dies; this warranty is a bar to the Writ of error, because by his own Act he had disabled himself to take benefit of the forfeiture, *Coke 3. part. 61. A. Lincoln-Colledg case. Q. De cest case.*

Heir.

A recovers a Moyety of a Mannor against *B*, which infeoffs *C*, *B*, and *C* makes partition; *B* dies, his Heir shall have a Writ of error, and by *Newton* if *A* had issue a Son and a Daughter by one *Venter*, and another Daughter by another *Venter*, and dies, the Son enters, and dies, the youngest Daughter is found Heir in a *Nuper obiit*, they make partition, the eldest Daughter shall have a Writ of Error, 19 *Hen. 6. 25. A.* For the judgment binds her interest till it be reversed.

Pray in
Ayd.

Prayer in Aid shall have a Writ of error, *Nat. br. 21. C. Coke 3. part 3. B. 4 Affize, pl. 7.* For the praying in Aid is but to satisfie his Title which he had before.

Patron.

Patron after Aid, Prayer shall have error, 12 *Hen. 8. 8. Pollard.* For the Judgment concerns his Title, notwithstanding the Aid-Prayer.

Garnishee

Garnishee shall have a Writ of error, 21 *Hen. 6. 35. B. Paston. 7 Hen. 6. 41. Coke 5. part. 99. B. Hoer case.* For he is bound by the judgment.

Garnishee in *London* upon an Attachment according to the Custom, shall have error, 22 *Edw. 4. 30, & 31.* For the judgment is in part against him.

Tenant.

Tenant per Receipt shall have error, *Coke 3. part. 3. 4 Affize 7. 20 Edw. 3. Error 2.* For by the Receipt he is made party to the Suit, and concerned in the judgment.

Vouchee.

Vouchee shall have a Writ of error, 8 *Hen. 4. 3. Nat. br. 21. C. 4. Affize 7. 17 Edw. 3. Error 90. Nat. br. 21. M. & 108. A.* For by the Voucher he is called in, and made a party.

And

And the Tenant shall have another Writ of Error, 8 Hen. 4. 3, 21 & Nat. br. 21. C. for they are severally concerned.

But if the Vouchee release before Error brought, the Tenant shall not have it, 17 Edw. 2. Recovery in value 32. for by the release he is barred, viz. a release of Errors, or of his right.

Heir general shall have a Writ of Error, 20 Edw. 4. 13. Lib. Intra. 269. A. Set. 1. for he is prejudiced by the Judgment.

And if the Ancestor be outlawed of Felony, he, viz. the Heir shall have it, Nat. br. 21. N. viz. to reverse the Outlawry, and to gain his own interest.

Heir general.

But not for High Treason, per 28 Eliz. cap. 2. because thereby the blood is corrupt and disabled.

The Heir special shall have it for the Lands to which he is heir, 3 Hen. 4. 19. Nat. br. 21. K. 9 Hen. 6. 47. 1 Marie Dyer 90. pl. 5. but he must have a special Writ, as it seems.

Heir special.

Executor shall have Error upon judgment for debt or damages, Nat. br. 21. M. given against the Testator, for the regaining of the Testators estate.

Executor.

Although that he be Executor to the Bishop, Parson, or other sole Corporation, Nat. br. 22. A. Coke 4. part. 65. A. Fulwoods case, 8 Hen. 6. 25. A. Martin. for that makes no difference in the case.

And this upon the Statute of 29 Eliz. cap. 8. Coke 6. part. fol. ult. Executor shall have error upon an Outlawry of the Testator, and restitution of the goods lost by the Outlawry, 11 Hen. 4. 65. pl. 22. 5 Edw. 4. 7.

§ 2

Although

Although that the Outlawry be for Felony,
Coke 5. part. 111. A. vid. antea.

**Admini-
strator.** Administrator shall have error in the same
 manner as Executor shall have, *Nat. br. 21. M. 6
 Edw. 6. Dyer 76. pl. 31.* for he hath the same inter-
 est in the Intestates personal estate.

Successor. A Successor shall have error for a thing which
 toucheth the Succession, to a thing whereof he is
 so, *Nat. br. 22. A. 16 Edw. 3. Error 69. 8 Hen. 6.
 25. A. Martin.*

King. The King collates *A.* to a Chappel, against
 whom an Action is brought, *A.* relinques to the
 King, the King collates *B.* Judgment is given *pro
 querente*, *B.* shall have Error, *15 Edw. 3. Error 7.
 15 Affize 8.* for now the interest concerns him.

Bishop. But for Debt or Damages recovered against
 a Bishop, &c. or against any Secular sole Corpo-
 ration, the Successor shall not have Error, *Nat. br.
 22. A.* for the damages concern the Executor
 and not the Successor, and so he hath no right to
 sue.

Reversion. He in Reversion after the particular estate end-
 ed shall have Error at Common Law, and not
 before, *Coke 3 part. 4. A. 21 Hen. 6. 29. Newton,
 3 Hen. 4. 6. 32 Edw. 3. Error 73. 4 Hen. 8. Dyer 6.
 pl. 5. com. 24. B. Weston*, for before he is not con-
 cerned in the Judgment. ②

And per 9 *Rich. 2. cap. 3.* he shall have it du-
 ring the Estate for life, *Coke 3. part. 4. 22 Edw. 4.
 31. A. Vavisor*, 3 *Hen. 4. 6.* 12 *Hen. 8. 9. A. Brud-
 nell.* And this seems reasonable, for he may be
 prejudiced by the delay. ②

And by equity he in the remainder shall have it,
Nat. br. 108. A. 1 Maria, Dyer 90. pl. 5.

But

But at Common Law the Donor in tail shall not have it altogether, *com.241.B. 2.*

And yet he shall not have Error during the estate Tail, because he is not within the Statute of 9 *Rich. 2. cap. 3. Coke 3. part. 61. A. Lincoln Colledge case, & 10. part. 44. B. Portingtons case.*

But after the Estate tail ended he shall have it, because the Law reserves the reversion in the Donor, *Coke 3. part. 3.B.*

And although Tenant in tail suffered a Common Recovery, and released Errors, and yet brings error and is barred, and dies without issue; yet the Donor or he in Remainder shall have Error, 3 *Eliz. Dyer 188. pl. 9.* to reverse the Recovery; for if that be erroneous, then the Estate tail is not barred by it.

Note, regularly no Stranger shall have Error, Estranger. 22 *Edw. 4. 31. per Brian, viz. a Stranger to the Judgment;* but this holds not always.

Conusor aliens, Execution is sued erroneously, Conusor. the Alience shall have error, *Nat. br. 22.B. 4 Hen. 8. Dyer 1. pl. 5. 17 Affize, 24. 18 Edw. 3. 25. pl. 17. Crooke, 6 Hen. 8. 169. A. Pollard;* for his title is concerned.

A claims wood in a Forest, and this allowed Tenant. before two Justices of the Forest, B, & C, which claim Estovers, brought a writ of Error in *Ban. Regis, 21 Edw. 3. 48. pl. 70.* and good to reverse this allowance, which is in nature of a Judgment, and binds their right to the Estovers.

The Tenant in a *Præcipe* enfeoffs B, Judgment given *pro quer. B* shall have Error for the mischief; that may fall to him by the Judgment, 21 *Edw. 3. 53. 21 Affize 41. 20 Affize 2. 50 Affize 3.*

But *quare* 50 *Affize* 3. if the Tenant in the *Præcipe* aliens to *B*, which releases to the Feoffor for life, and judgment *pro querente*, if *B* shall have Error, *per* 9 *Rich.2.cap.3.* It seems he shall, for all his interest is not gone by the release.

King.

Where the King is party to the judgment, there shall be Error against him; but not before Petition made to the King, *Pasch. 12 Jac. Ban. Regis, Davies case, 23 Edw. 3.12. pl.14. 18 Hen.6.17. 22 Edw.3.3. pl.25. 24 Edw.35. pl.43.* for it may be, that upon the Petition the King will let the judgment be reversed without Suit; and it is not fit to sue the King, where one may have right of him for asking it without suit.

The Writ of Error.

The Writ ought to make mention of him, which was summoned and seivered, 9 *Hen.6.38. 13.* because he was once party to the suit.

An Action of Covenant is brought against *A* as Assignee, and judgment given against him, he brought Error, the Writ needs not mention him as Assignee, because this Addition was not of substance, 19 *Eliz. Dyer 356. pl.41. Q.* for then he must be called Lessee, which properly he is not but by construction of Law.

The

The Process in Error, 1. Upon Judgment in Ireland. 2. Upon a Bill sealed. 3. Judgment in another Court.

Error brought upon a Judgment given in *Ban. Ireland. Regis in Ireland*, there shall be a *Scire facias* in the Writ of Error against him that had the judgment; for by *Sharde* this is the usage, and in no other manner, 34 *Affize pl 7.* and it is dangerous to alter the ancient practice of proceedings in Law.

In Error upon a Bill sealed, there shall be a Bill sealed. *Scire facias* against the Justices, which sealed it, *ad cognoscend. Sigilla, &c. per Westm. 2. cap. 31. Lib. Intra. 293. C. Sect. 1. 11 Hen. 4. 92.* This is where Error is brought upon a Bill of exceptions.

But the Justices may deliver it in Court by their own hands, 11 *Hen. 4. 52. 92.* and then there shall be no *Scire facias*, for thereby they acknowledge their hands.

The Process in a writ of Error against the Process. Judges, to whom the Writ is directed, is *Alias*, *Pluries*, and Attachment, *Nat. br. 22. G.* if they do not certify the Record which is before them.

When the Record is removed after Errors assigned, the Plaintiff shall have a *Scire facias* against the Defendant *ad audiend. Errores*, *Nat. br. 22 E. 10 Edw. 4. 13. 3 Eliz. Dyer 195. pl. 38. & 201. pl. 63. 17 Edw. 3. 5.* This is to give him notice that the Record is removed, and of his proceeding thereupon. Errors assigned .

And upon two *Nibils* a *Non est inventus* returned, the Court shall come to examination of the errors, 3 *Eliz. 201. pl. 63.* without the Defendants in the writ of Errors appearance.

But until Error assigned the party shall not have a *Scire facias*, 24 *Edw.* 3.31. *pl.* 8. for it is to no purpose, for his appearance is to hear the cause.

And if he assign that for Error, which the Court takes clearly to be no error, he shall not have a *Scire facias*, 18 *Hen.* 6. 17. for that would be to trouble the Court to no purpose; but if it be colourable it is otherwise.

But in Error brought against the King, there shall be no *Scire facias*, because the King is intended to be always in Court, *Nat. br.* 21. *H.* either himself or his Counsel, for the Judges are of his Counsel.

Against
whom a
Sci. fac. in
Error shall
be sued.

The Writ needs not mention the names of the Tertenants, because it is of common form used otherwise, 8 *Hen.* 4. 17. *pl.* 3. and the naming of them is not material.

Other
County.

If the Sheriff return that the Heir is not in his Bailiwick, and the Tertenant shews that he is in another County, there shall go a *Scire facias* into that other County, 8 *Hen.* 4. 18. *pl.* 3. *Q.* if he remove out of that into another, if another *Scire facias* shall issue, and so till he is found.

Tertenant

If a Recoverer make a Feoffment, and die without Heir, it seems there that a *Scire facias* lies against the Tertenant only, and a Writ of Error, 8 *Hen.* 4. 17. *pl.* 3. 9 *Hen.* 6. 49. *B.* *pl.* 30. *Q.* whether not against the Lord by Escheat also, because he comes in by virtue of the Judgment.

Former
Judgment.

But the 9 *Hen.* 6. 46. *B.* *pl.* 30. a Writ of Error lies against none but the party, or them that are privy

privy to the former Judgment. *Q.* if not against privities in Law as well as in fact.

Gardein in right of the ward recovers in a *Quare Impedit*, and dies, the Defendant brought Error and a *Scire facias* against the Heir of the Recoverer, and against the Heir of him from whose right he took his title, and against the Incumbent, without naming the Executor; yet good, because he recovers as Gardein in right; but the contrary as Gardein in deed, 8 Hen. 6. 35. pl. 1. for there it seems the Executor is concerned, for the wardship is a Chattel.

Error upon false Judgment in Oxford, viz. for False Land, the party being dead that hath the Judgment, there shall go a *Scire facias* as well against the Heir of the Recoverer, as against the Tertenant, 8 Hen. 4. 18. pl. 3.

A *Scire facias* needs not be sued against the Tertenant before the Judgment be reversed, 47 Edw. 3. 7. for before that the Tertenants estate is not stirred.

But before that he enter, he shall have a *Scire facias* against the Tertenant, for otherwise he shall be a Disseisor, 4 Hen. 7. 10. 47 Edw. 3. 7. but by the *Scire facias* it appears that he enters not as a Disseisor.

But if the Recoverer make a Feoffment to his own use, and then the Judgment be reversed, there needs no *Scire facias* against the Feoffee; for this is aided per the Stat. of 1 Rich. 3. 26 Hen. 8. 2.

Error upon an Outlawry in Felony, the Plaintiff ought to have a *Scire facias* to all the Lords, mediate or immediate, 7 Hen. 7. 5. 53. 4 Edw. 4. 10. 11 Hen. 4. because they are intituled by the Outlawry.

Delay.

And also against the party, at whose Suit and the Tertenants, *Lib. Intra.* 308 B. Sec. 3.

And in a writ of Error, if the Plaintiff hasten not his Suit, the Defendant shall have a *Scire facias* against the Plaintiff, to shew cause why he should not have Execution, 24 *Edw* 3. 24. 9 *Hen.* 6. 13. or else he may proceed in Court to have the Judgment affirmed.

And in such case upon two *Nichils* returned, the Defendant shall have execution, but after this the Plaintiff shall have a *Scire facias*, 9 *Hen.* 6. 13. *Q.* for then it seems to be too late.

Diminution in Error, 1. by whom; 2. in what cases; 3. at what time.

1. The Plaintiff in Error may alledge Diminution, *Nat.br.* 25. A. that is, alledge that a whole Record is not removed.

The Defendant may do it also, 28 *Hen.* 6. 11. 15 *Eliz.* *Dyer* 321. pl. 21. for if the Record be not wholly removed, the Court cannot judge of it, nor can the parties tell how to assign Errors; But this alledging of Diminution is now used mostly for delay.

Error in
London.

2. Error upon a Judgment in London, the Recorder certifies the Record; yet he is held to do according to the custome. *Quere*, if Diminution shall be alledged, 34 *Hen.* 6. 42. it seems it should.

When all the Record is not removed Diminution may be alledged, *Nat.br.* 25. A. vide the Writ there.

Dimi-

Diminution may be alledged in

1. The Effoin, *Lib. Intra. 290. C. Sect. 1. 1 Hen.*

7. 2:

2. Continuance of the Jury, *Lib. Intra. 290. D. Sect. 2.*

3. Words in title in Assize, *Lib. intra. 290. D. Sect. 3.* or any thing material in the body of the Record.

Diminution shall not be alledged upon a Bill sealed, because the bill is not of Record, 11 *Hen. 4. 52. Hull, & 65.* but is given in to the Court by him that takes the exceptions.

3. After *in nullo est erratum* pleaded in another Diminuti- Term, the Plaintiff may not alledge Diminution, on. 28 *Hen. 6. 11.* for then he hath pleaded to the Record as it is, and acknowledged it to be rightly removed.

But the Defendant may, 28 *Hen. 6. 11.* for he hath done nothing to conclude himself.

But per 7 *Edw. 4. 25. Error 45.* the Defendant may not. Q.

But *Coke 5. part. 37. B. Bishops case*, after *in nullo est erratum* pleaded, no Diminution shall be alledged by either party; for if it should be suffered, it would cause great delay.

The Plaintiff to the Writ before that he assigns Errors, or a *Scire facias ad audiend. errores* may alledge diminution, and by this means the Defendant may not afterwards alledge Diminution, 16 *Eliz. Dyer 330. pl. 18. vide 13 Hen. 4. Error 92.* because it is done already, and it seems it may not be twice done.

But note, that the Defendant after that he had Note. rejoyned in the Writ, alledged Diminution, No. *Lib. Intra. 232. B.* Q. The

The Plaintiff may not alledge Diminution for any Error in fact after a *Scire facias* awarded, 22 *Edw. 4. 45.* but only for matter in Law; for the *Scire facias* admits the matter of fact to be right.

The Assignment of Errors, 1. by whom; 2. at what time; 3. upon what Record; 4. of what things.

Assignment of Errors is in place of a Declaration, 9 *Edw. 4. 32.* for therein the Plaintiff declares, why the Defendant should not have execution upon his Judgment.

Assign
Errors.

If one brings a Writ of Error, and he and another assign Errors, this is good, as to him that brought the Writ of Error, and void as to the other, for that was but superfluous; but if two brought error, and one assign errors, this is not good to either, because the Writ was joynt, *Mich. 9 Jac.* in the Chequer Chamber, *Shakely versus Porter.*

Conusor.

Conusor of a Fine shall not assign error in the Conusance to reverse his own Fine, which is his own act; neither the Conusee in the Grant and Render, which is his act; neither the Recoverer in the Recovery, *Coke 5. part. 39. B.* for they ought not to defeat, but to maintain their own acts.

Executor.

Executor in Error by him upon a Judgment given against him, shall not assign for error, that the debt was but upon a simple Contract, *Com. 182. A. 10 Hen. 6. 24.* for he might have pleaded it in barr of the Action.

Party

Party shall not shew error in Process, unless he shews that it is for his advantage in his prosecution, 7 *Edw. 3. 25. Coke 8. part. 59. A. Nat. br. 21. F.*

But may afterwards shew that the Judgment is erroneous by reason of such Error, *Coke 8. part. 59. A. Beechers case, 14 Eliz. Dyer 315. pl. 99.* and then is his proper time to do it.

Reversioner not being made a party shall not assign for Error, that the Sheriff made a warrant to the Bailly to make a pannel where the party was guildable, 3 *Hen. 4. 6.* for the trial concerns him not.

The Successor shall assign for error, that his Predecessor was but named Gardein, 15 *Edw. 3. Error 7.* where he ought to have been otherwise named.

Error shall be assigned before a *Scire facias* shall be awarded, 24 *Edw. 3. 31. pl. 8.* for that is the ground of the *Scire facias*.

For after a *Scire facias* awarded the Plaintiff cannot assign error in deed, 22 *Edw. 4. 45.* for upon the return of the *Scire facias* the Defendant is to come in, and to hear the errors assigned upon the Record.

Upon a Judgment given upon a Demurrer in Law, and a Writ to enquire of dammages awarded, a Writ of Error was brought, and he assigned errors, 17 *Edw. 3. 5.* and good, as it seems. *Quere tamen.*

If the Record and the Writ of Error do not agree, Error cannot be assigned upon that Record, 9 *Hen. 6. 4. 2 Eliz. Dyer 180. pl. 48. 28 Hen. 6. 11.* for it shall not be judged to be the

the same upon which the Writ of Error was brought.

New Writ of Error. If the Writ of Error be faulty in substance, errors shall not be assigned upon the Record, but shall have a new Writ, *Quod coram vobis residet*, 3 Hen. 6. 3. & 26. 5 Maria Dyer 164. pl. 58. that is, upon the Record, which is removed, and remains where the new Writ is brought.

False Judgment But if it be false Judgment, then there must be a new Writ to the Suitors, who were the Judges; for it is not of Record, 3 Hen. 6. 26.

Error without a day. If Error be put without a day, there shall be a new Writ before that error be assigned, 26 Hen. 6. *Scire facias* 33. Nat. br. 20. G. for the old Writ is null, and so the Judgment stands as if no writ had been brought.

Bill sealed. Upon a Bill sealed a man shall assign error, per Westm. 2. cap. 31. 11 Hen. 4. 52. 27 Hen. 8. 15. 25. Coke 9. part. 13. B. Downmans case, 9 Affize 8. 14 Hen. 4. 15. 4 Hen. 6. 15. A. Martin, 33 Hen. 6. 34. Littleton pl. 9. 7 Hen. 6. 37. 10 Hen. 7. 8.

And if the bill is refused to be sealed, the party shall have a writ to compel them to seal it, *Regist. orig.* 182. A, & B.

But by *Hill* Justice it is intended of a thing pleaded in Court; for otherwise it shall not be sealed, for the Judges are not to take notice of it.

Challenge. Challenge in an Affize was put in a bill sealed, and good, 9 Affize 8. 21 Edw. 4. 11. 20 Edw. 3. 63. Lib. Intra. 346. C. 27 Hen. 8. 24, 25.

Priviledge

Priviledge claimed, and not allowed, there may be a bill sealed, 22 *Edw.* 4. *Priviledge* 1. Priviledge

Conusance claimed, if the plea be challenged by one that is not party, there cannot be a bill sealed, 20 *Edw.* 3. *Conusance* 46. for it concerns him not. Conusance

A Patent to three to take an Affize where two take it, there may be a bill sealed, and error upon it, 29 *Affize* 42. Patent.

11 *Hen.* 9. Affize, the Tenant shews that the Sheriff was beyond Sea, and had a bill sealed of it. Bill sealed.

1. Although the bill did bear date after the Record removed; yet it is good.

2. Although the party did not bring it within the bill, but the Justices; yet good.

3. The party shall have a writ to the Justices, commanding them to seal it, where they do refuse to do it.

4. A writ to the Justices *ad cognoscenda sigilla. vid. antea.*

5. Two Justices seal it, yet one of them may deliver it; for the sealing, not the delivery, is the principal matter.

6. The party brought a *Scire facias ad cognoscend. sigilla*, before the Justices come in Court; yet good, for after that they come the bill was of Record *ab initio*, and so the *Scire facias* may have a good relation.

Upon a transcript of the note of a Fine error shall be assigned, and if Error appears they shall send for the note it self, and reverse it, 21 *Edw.* 3. 24. 16 *Edw.* 3. *Record* 35. 40 *Affize* pl. 29. Transcript

For

For otherwise perchance the Fine may not be ingrossed, which may prove mischievous, 1 *Mariae Dyer* 89. pl. 4. *Lib. Intra.* 296. *A. scđ.* 1. *Fines, Nat. br.* 20. B.

But note, 5 *Mariae Dyer*, *Record* 79. the Record shall be certified, and no other proclamation shall be made. This is intended of a Fine with Proclamations.

But 1 *Mariae Dyer* 89. pl. 4. *è contra.* Ergo *quere.*

Upon a transcript in Parliament error is assigned, for the Chief Justice brought up the Record, and reported it *Ban. Regis*, 8 *Hen.* 5. Error 88. 23 *Eliz.* *Dyer* 375. pl. 19. 22 *Edw.* 3. 3. pl. 25.

But in another Court it is otherwise, 40 *Affize* 29. *Nat. br.* 20. F. *Quere rationem.* It seems, because all Courts agree not in one way of proceedings.

Priviledge Upon an award by the Justices upon return, upon a writ of Priviledge, no writ of Error lies, *Coke* 8. part. 127. B. case of the City of London; for this is no judgment upon Record.

Claim. Upon allowance of claim by the Justices of the Forest, 21 *Edw.* 3. 48. pl. 70. error lies, *vid. antea*, for it is in nature of a Judgment.

Record removed. Upon a Judgment in an annuity, and after that a Judgment in a *Scire facias* upon the judgment; Error is brought upon the former judgment, the Record shall be removed, 11 *Hen.* 4. 4. *viz.* the whole Record, as it seems.

Proclamations. Error upon a Fine with proclamations, the proclamations shall be certified, *Com.* 265. *A. Fishes* case; for they are part of the Record by virtue of the Statute.

A Writ of Error shall not be awarded until the final judgment be given, *Coke 11. part. 40. A. Metcalfs case, 7 Rich. 2. Error 68.* for the tenour of the Writ supposeth the judgment to be given.

Unless the Award be *ad grave dampnum*, *Coke 11. part. 41. A. Metcalfs case*; for then it seems a necessity to grant it before.

As in Debt against many by several *Præcipes*, and judgment is given against one, he shall have error, and the pleadings shall be several from the original, and if Error be in the original, *tenore tantum* shall be certified, *Coke. 11. part. 41. A.*

Judgment in an Account *quod computet*, error Account. lies not until the final judgment, *Coke 11. part. 38. B. 21 Edw. 3. 9. 1 Hen. 7. 2. B.* for the judgment is not perfect and entire before, nor the Record made up.

When an Action of Trespass is in part deter- Trespass. mined, error lies not until it be determined all, *32 Hen. 6. 5. pl. 5. 36 Hen. 6. Coke 11. part. 39. B.* for before the whole Action is not determined, and so no compleat judgment.

So in a *Formedon*, *12 Eliz. Dyer 291. pl. 67.* Formedon. *Coke 11. part. 39. B.*

So in Trespass against two, *34 Hen. 6. 41.* Trespass. *pl. 9.*

So in a *Quare Impedit*, *34 Hen. 6. 41.*

So in Partition, *Mich. 40. & 41 Eliz. Com. Ban. Impedit.* Partition. Countess of *Warwick* against *Henry Lord Barkley*. All upon the same ground.

If error be brought before the fourth day in Day. *Com. Ban.* yet it is good, because of Record at the Commencement, *34 Hen. 6. Quare*, whether so in *Banco Regis*.

In

In an Assize of Darrein Presentment, a Writ was awarded to the Bishop, and the Assize is for dammages, error brought and allowed, 17 *Edw.* 3. 5. *pl.* 12. for this was a judgment.

Record.

Error upon a judgment in a *Scire facias* upon a Fine, and no Record removed, but the proceedings upon the former judgment, and yet good, 20 *Edw.* Error 2. *viz.* the Fine which is a Judgment in its nature, and the *Scire facias* is but to have Execution upon it; yet it seems better, if all were removed.

Præcipe quod reddat.

Upon a *Præcipe quod reddat* judgment is given, and error brought; the original, nor the judicial Writ, nor the essoyne shall be removed, 2 *Edw.* 3. Error 2. *Thorpe* 37. *Assize* 5. but only the Record of the judgment; for there the error is only supposed.

Unless Error be assigned in the Original, 24 *Edw.* 3. 24. and then it must be removed, *viz.* the tenour of it.

Transcript

And then the transcript of the Record only shall be removed, 34 *Assize* 7. 36 *Hen* 6. 13. for the Record is supposed not to be erroneous.

Statute-Merchant.

Error upon an execution upon a Statute-Merchant, and error in process assigned, the original shall be removed, 18 *Edw.* 3. 24. for the original is part of the process.

Ancient Demean.

And if it be of Ancient demesne Lands, the Original shall be removed, 34 *Assize* 7. out of that Court.

But Error upon a judgment in Ireland, the Original shall not be removed, 74 *Assize* 7. 37 *Assize* 15. *Finchden.* *Quare rationem*; it seems, because it is a Record of another Kingdom.

Error

Error lies not upon a Fine or Common recovery for false Latin, rasure, interlining, misentry of the warrant of Attorney, Proclamation misreturned, or not return of the Sheriff, or default of form in words, 23 *Eliz. cap. 3.* This Statute was made in favour of Fines, and to support them, because they are the common Assurances of the land. Fine and Recovery.

And by 27 *Eliz. cap. 9.* this extends to Fines in Wales, and Recoveries there.

But if the fine be passed before the Kings Silver be entred, it is Error, *No. Lib. Intra. 231. A. sect. 2. viz.* for the not entring of it; which is paid *pro licentia concordandi.*

If a Writ of Covenant be returned before the Teste, this shall be amended, *Coke 5. part. 45. B. Gages case;* for it is the misprision of the Clerk.

The Caption before the Teste of the *Dedimus*, is no error, *No. Lib. Intra. 255. C. Sect. 11.* for the same reason.

Pasch. 1. Jacobi Regis, Rot. 426. the Countess of Bedford against Foster, 1. Error assigned was, because the Writ of Covenant was of eight Messuages and two Tosts, and the Fine certified is of eight Messuages and two Messuages, but *non allocatur*, because the Record hath relation to the Writ of Covenant. 2. Error assigned, because the Indorsement was *Executio istius brevis patet in quadam panella, &c.* where it should be in *quadam scheda, sed non allocatur*, because in substance it is the same thing, expressed by divers names.

Mich. 30 Eliz. Ban. Regis, Austein & Steede versus Conaway & Webbe, a Fine was levied of

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two

two Tenements, and void, because a *Precipe* lies not of it; this case is entred, *Hill. 30 Eliz. Rot. 165.* for a Tenement is a thing incertain, of which a Fine cannot be levied.

Infancy.

Infancy good Error in a Fine, *Nat. br. 21. D. 3 Hen. 6. 16. B. 2 Rich. 3. 1. 17 Edw. 3. 53. pl. 33. 27 Assize pl. 53.* if it be brought during his Minority, that he may be inspected by the Court, and his Age proved.

But if he come to full age it is not; for then he is not in the same condition as he was when he levied the Fine, *17 Edw. 3. 53. pl. 33. Greene, 17 Assize pl. 17.* nor can it be so well tried.

And although the other ject a protection, yet if the Infant be inspected when he comes to full age, he shall have the benefit of his nonage, *22 Edw. 3. 6. pl. 24. 21 Assize pl. 10.* for the Infant could not proceed to reverse the Fine during his Infancy, by reason of the protection.

Feme
Covert.

Feme Covert, as Feme sole, levies a Fine, this shall bind all but the Husband, *Coke 7. part. 8. Bedfords case, 17 Edw. 3. 52; & 78. 7 Hen. 4. 23.* because as to him she was covert, and could not act without him, though not in respect of others.

Husband.

But if the Husband enters and dies, the Fine is void without more suit to all parties concerned, *Coke 7. part. 8. Bedfords case, 7 Hen. 4. 2. 23.* for that shews his disagreement to his Wives act.

But if living the former Husband, and she take a second Husband, and they levy a Fine; this is utterly void, because the second Marriage is void, *7 Hen. 4. 24. B. Gascoign, 9 Hen. 6. 34. B. pl. 3.*

pl. 3. This was before the Statute of *Jac.* against having two wives or two husbands.

Note, when a thing is amendable before the Writ of Error brought, it is amendable as well after, and this by a Superiour Court, as well as an Inferiour Court, *Coke 8. part. 162. A. Blackamores case*; for the Writ of Error doth not hinder such amendments.

Note, that those things that are not amendable and yet vicious, are Errors at this day, for there is no other way to redress them.

When Judgment is given, but not upon a verdict of 12. upon Issue joyned, there are 7 Errors not amendable, *Coke 8. part. 162. A. Blackamores case*; as upon a Judgment by default, by *Nihil dicit, non sum informatus*, or upon a Demurrer, &c. *Vid.* some alterations by a late Statute *tempus Caroli Secundi*, concerning Errors.

Want of the Original Writ, *No. Lib. Intra. 1. Original. 246.D.*

Misprision of the form of the Original, false Latin in it, or variance from the Register.

Material variance between the Original and the Count or Declaration, as *C.W.* in the Writ, and *W. W.* in the Count, *Coke 5. part. 37. Bishops case.*

Jeofail, fault of Colour, insufficient pleading, or some default of the person, or of his Counsel.

Error, or misprision of the Judges in another Term, *Misericordia pro Capiatur, & e contra*, *Coke 8. part. 59. A. 41 Eliz. Dyer 3 15. pl. 99.*

Want of warrant of Attorney.

6. Warrant.

7. Appeal. Error in pleas of the Crown and Appeals, or in proceedings upon them, they are not amendable, for they are excepted out of the Statute of Amendments; and also Error in the exigent to make one to be outlawed, *Coke 8. part. 162. A. Blackamores case, Br. 10.* This is in favour of life and liberty, and property.

What things are amendable after verdict. 1. Material variance. When Judgment is given upon a verdict of 12. men, upon issue joyned, there are 10. Mispri-
 sons not to be remedied or amended, *Coke 8. part. 163. Blackamores case.*

Material variance between the Original and the Count, *Coke 5. part. 37. Bishops case.*

The Original is *Barbara*, and the Count is *Barbaria*; this is erroneous, *Mich. 9 Jac. Ban. Regis, Harrison & Festiplace*, for they are two several names, and so may be two several persons.

Waste brought in *Burum Appleby*, and *Flackbridge*, and the Count is of waste made in *Burum Appleby & Flackbridge Park in Langton*, and it is variance, because there is more in the Count than in the Writ, *Hill. 12 Jac. Com. Ban. Countess of Cumberlands case*, and so it may not be for one and the same matter.

When the Original and the Count differs in the substance, *Coke 5. part. 45.*

Husband and wife brought debt, or an Action for rent due to them, where it was due to the wife before Coverture; this is aided by the Statute, and good after verdict, *Trin. 9 Jac. Ban. Regis, Poore versus Boule.*

Hill. 36 Eliz. Ban. Regis, Rot. 610. Griffin versus Elliot.

Ejectione firme wants (*vi & armis*) this is but a fault in form; and shall not stay Judgment after Verdict; and then it was also said, that these words are not material, for it may be without them, 7 Hen. 6. 4. 17 Edw. 3. 1. *Q.*

When the Venue is mistaken.

The Issue was, that within the Mannor of *Wargrave*, and it was of the Mannor of *Wafield*, demisable by Copy of Court Roll, &c. the Venue was of the Mannor of *Wargrave*, and good, because the issue was upon the Custome within the Mannor of *Wargrave*, *Coke* 11. part. 18. *A. Nevils* case; but if one Mannor was in one County, and another in another, then it is otherways, *Mich.* 11 *Jac. Ban. Regis*, in the same case; for then that Jury could not try the issue.

3. Mispri-
fion of
the Viñe.

1. *Trin.* 11 *Jac. Ban. Regis*, *Morton* versus *Orde*, resolved in a Writ of Error 1.

Infancy during Nonage shall be tried by the Justices by inspection and other proof in Court, *Coke* 9. part. 30. 17 Edw. 2. Account 122. 46 Edw. 3. 8. 48 Edw. 3. 11. 14 Hen. 4. after Nonage by a Jury.

2. If it be doubtful to the Justices, the Infant and the Witnesses shall be examined in Court, 25 Edw. 3. 42. 50 Edw. 3. 5.

3. If he be of full age in Actions reals, it, viz. the Issue, shall be tried where the Land lies, 21 Edw. 3. 28. 38 Edw. 3. 17. 44 *Affize* 10. 46 Edw. 3. 7. 13 Hen. 4. 3. 19 Hen. 6. 51. for the Land is the principal matter.

4. If it be an Action personal as *Ejectione firme*, it shall be tried where the Action is brought, 21 Edw. 3. 7. 3 Hen. 6. 40. 34 Hen. 6. 50.

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and

and so it was adjudged, because it is transitory, and not fixt to a place.

4. Sheriffs
Retorn.

When the Retorn is by the Sheriff, where it ought to be by the Coroners, or *è converso*; for such is no retorn, because made by a wrong Officer.

5. Jury.

When the Sheriff puts not his name to the Retorn of the Jury, as he ought to do; for else it cannot be known to be his Retorn.

6. *Venire
facias.*

When there is no Retorn indorsed upon the *Venire facias*, so if the name of the Sheriff be not put to the Writ of Inquiry of Damages, *Mich. 9 Jac.* in the Chequer Chamber, *Shackly versus Porter*, for these are things of substance.

7. Verdict.

When one gives the Verdict that was not returned in the *Venire facias*, though he be sworn.

8. Action.

When it appears to the Court by all the Record, that the Plaintiff had no cause of Action; for the Court is to judge of the Record.

9. Crown.

In Appeal, or Pleas of the Crown, or in any proceedings upon them. *Antea.*

Statutes
penal.

Or to the Writ, Bill, or Action, Informations, upon popular or penal Statutes.

10. Law.
Judgment.

Error in Law by misprision of the Judges in the judgment entred in another term, *Coke 5. part. 57. B. Specots case*; but in the same term it may, because all that term the judgment is in the breast of the Judges.

Action upon the Case in *Cur. Wallingford*, the judgment was, *quod defend. capiatur*; this is Error, being but an Action upon the case, *Trin. 9 Jac. Ban. Regis, Northcot versus Heywood*, for the Judge ought to be *defendens in misericordia*; for
it

it is *capiatur* only where the Action is *vi & armis*, in respect of the fine to the King.

Concessum est, where it should be *Consideratum est*; this is Error, although there are 21. Presidents in my Lord Cokes Reports to the contrary, for by *Man* Secondary the Books are false printed, *Mich. 8. Jac. Ban. Regis, Rot. 641.* and by *Williams*, if it be *videbitur Curia*; this is erroneous, for the Court is not to vary from their forms in such high matters as Judgment are.

If it be *Capiatur* against the Defendant in an *Ejectione firme*, *Mich. 8. Jac. Ban. Regis, Rot. 232.* *Dolby versur Holbrook*, it is error, for it should be *ideo in misericordia*.

It is ordained *per 27 Eliz. cap. 8.* that if Error be brought in the Chequer upon a judgment in *Ban. Regis*, they shall not assign it in the Jurisdiction of the Court, or in form of the Writ, Return, Plaint, Bill, Declaration, Pleading, Process, Verdict, or Proceedings; but only insist upon the matter in Law.

And also there is a Proviso, that it shall be in Debt, Detinue, Account, Covenant, *Ejectione firme*, Traverse, Action upon the Case; and not in other Actions of a higher nature.

The party cannot shew Error in Process in delay of the Defendant, unless he shew that it is for his disadvantage, and that he is injured thereby, *7 Edw. 3. 25. Coke 8. part. 59. A. Beechers case.*

Nothing that is done contrary to the Office of a Judge. Judge shall be assigned for Error, *Nat. br. 21. B. 7 Hen. 7. 4.* for their Authority shall not be questioned this way.

Granting of Aid where it should not be, is not Error, so of Receipt, 7 *Edw.* 4. 12. 21 *Edw.* 4. 63 B. 5 *Hen.* 7. 8. 8 *Hen.* 7. 9, 11. 14 *Hen.* 6. 5. pl. 25. but if it be denied where it ought to be granted, it is Error; for none is prejudiced by the former, but by the latter the Defendant is prejudiced.

So of Garnishment, 14 *Edw.* 4. 1. pl. 3.

So of making of an Attorney, *Nat. br.* 22. D. 21 *Edw.* 4 77.

Vifne. But denial of Aid or Receipt, where it ought to be, is Error, *Edw.* 4. 65. B. 5 *Hen.* 7. 8. 8 *Hen.* 7. 9. *vid. antea.*

Vifne. When the Vifne is mistaken, it is error, for there is no right trial.

In Replevin. Replevin, the Defendant prescribes to have all the Pasture of such a place in *W.* except Common for the Inhabitants of *D.* and the Prescription being traversed, the Jury was of the Vifne of *W.* only; and this was ruled good in Error brought, because the words of exception to the Inhabitants of *D.* was void, therefore this was not put in issue, *Trin.* 11 *Jac. Ban. Regis, Wicker versus Stockeman*, and to nothing in *Dale* was put in issue.

In waste. In Waste brought, the Issue was for certain Oaks cut for repairing of the Castle of *Burrum*, the Vifne was of the Village of *Burrum*, where it should have been of the Castle of *Burrum*; this is Error, *Hill.* 12 *Jac. Com. Ban.* the Countess of *Cumberlands* case, for a Castle and a Village are two different places.

Trover and Conversion brought in *Coventry*, Trover & Conversion.
 upon not guilty pleaded, the Visne was *De Vicineto Civitatis Coventrie*, and this shewed in arrest of judgment, *sed non allocatur*, and error upon it brought, and it seems that by *Williams* and *Telverton* Justices, that it is error; for it should be of *Coventry*; for *Vicinatum* is of the Neighborhood of *Coventry*, and excludes the City, and the Sheriff of the County ought to make it out, 7 Hen. 6. 36. B. 4 Edw. 4. 39. 7 Hen. 4. 12. 80. Inquest 36. *Quere tamen*; for the Court did advise about bringing of a new Action, and did not determine the Question, Pasch. 9. Jac. Ban. Regis, *Procter* versus *Clifton*.

Trespass for lopping of Wood in *Hursley*, the Defendant pleads that the place is parcel of the Mannor of *Mamden* in the Parish of *Hursley*, and the Custom is, that the Copy-holder may cut, &c. and found for the Plaintiff, and the Visne was of *Hursley*, and it was moved that it was not good, for the Parish is not certain, because it may comprehend more Villages; but it was good *per Curiam*, because *Hursley* shall be taken to be a Village and Parish, and shall not be intended, that there are more Villages in one Parish, except it be shewed, 5 Edw. 3. 20. Mich. 9. Jac. Ban. Regis, *Brocke* versus *Spencer*.

Hill. 9. Jac. Ban. Regis, *Savil & Cavendish*, Condition Condition to pay money in the Church porch of to pay the Parish of *H.* and pleads performance, the money.
 Visne was of *H.* and yet good, for as it seems the Village and Parish shall be intended all one, and the Parish shall not be intended to comprehend more Villages.

Debt

Obligati-
on.

Debt upon an Obligation to perform Cove-
nants, and declares of the breaking of the Condi-
tion, because a stranger recovered the Land at
Westminster upon a good title, where the Land
lies in *Com. Berks*, the Defendant said that it was
by Covin, without this, that it was upon a good
Title, the Plaintiff said that it was upon a good Ti-
tle the Visne shall be of the County of *Berks*, where
the Issue is joined upon the good Title, and where
the Land lies, but contrary if the issue be joined
upon the Covin; for that is alledged at *West-*
minster, but it was said, if it were a personal Ac-
tion, it shall be where the Recovery is alledged,
Mich. 9. Jac. Ban. Regis. Hansaker versus Kirby.

Ejectment

Ejectione firme of Land in *S. & T.* the Defendant
pleads a Feoffment of the Land by Deed at *S.*
the Plaintiff said *non feoffavit*, &c. the Visne was
of *S.* and *T.* and good; for the alledging of the
Feoffment at *S.* is idle; for it cannot be but upon
the Land which is alledged to be in *S.* and *T.*
Mich. 9. Jac. Ban. Regis. and so the Venue is
rightly laid there.

Debt.

Debt for 20 *l.* the Defendant pleads that at ano-
ther time the Plaintiff sued him in *London*, in such
a Parish for the same debt, and shews the Record
certain, &c. and that he had execution in another
Parish, &c. the Plaintiff said that it was in debt
for another 20 *l.* for the which execution was
awarded *absq; hoc* that the plaint and the executi-
on was for the same 20 *l.* yet the Visne shall be in
both Parishes, because the issue is as well of the
execution as of the plaint, 5 *Edw. 4. 110.*

A vouches *B.* who vouches *C.* and after issue
tried, the former Vouchee, viz. *B.* dies, this shall
not

not be pleaded in arrest of judgment against *A*, but it is error, if judgment be given, 21 Hen. 7. 80. pl. 1. *Crooke*, but if *A* die, it shall abate the Writ *in facio*, *ibidem*. because he is Defendant, and so no judgment can be given.

In detinue against *A*, he prays garnishment against *B*, which comes and pleads, and they are at issue, *A* dies, the Writ abates, *ibidem*.

Bar in Error.

No bar to say that the former Writ depending, the Plaintiff did infeof another; for he remains Tenant notwithstanding the Feoffment, 21 Edw. 3. 53. 20 Assize 2. 12 Assize 41. Coke. 1. part 111. *Albanyes case*; because the Feoffment was made *pendente lite*.

In nullo est erratum, a good Bar, 28 Hen. 6. 10. 9 Edw. 4. 32. 15 Eliz. Dyer 321. pl. 21. For it destroys the very supposal of the Writ.

But note upon Error in Deed this is no plea. 7 Edw. 4. 16. 9 Edw. 4. 32. 3 Edw. 6. Dyer 65. 2 *Marie*, Dyer. 104. pl. 10. Lib. intra. 288. D. sect. 1. 289. D. sect. 1. No. Lib. intra. 233. B. because that doth not appear upon the Record.

Release of Errors is a good Bar, 20 Edw. 3. Error 2. Littleton 116 B. Coke 8. part 152. *Althams case*. 6 Hen. 4. 8. pl. 36. 5 Edw. 4. 96. B. For the release of Errors makes the judgment good, were it never so vicious.

But a release of Actions reals and personals it is no Bar in error of an Outlawry, Coke 8. part 152. Littleton, 116. B. For the Outlawry concerns the Commonwealth, which interest cannot be released by a private person.

Feoffment

In nullo est erratum.

Release.

If

If the Defendant be outlawed in Redisseisin, a release of all demands is no Bar, because the Original and the Judgment are the process upon the Outlawry. 11 *Hen.* 4. 6.

The Release of the Vouchee shall bar the Tenant, 17 *Edw.* 2. Error 90. for the Tenant recovers in value against him.

Release of Errors by Tenant in Tail, is no bar to the issue, although it be tried against the Tenant in Tail, 3 *Eliz.* *Dyer* 188. *pl.* 9. For the issue in Tail is not bound by the judgment; for the issues derives paramount the tenant in Tail, *via. per formam doni.*

But if he in reversion in Tail disseises Tenant in Dower, and suffers an erroneous Recovery, and Tenant in Dower releases with warranty, and dies, this is a good Bar, *Coke* 3. *part* 60, 61. *Lincolne Colledge* case; because the recovery cut off the entail.

A Release of one bars another, when two are to recover a personal thing in respect of their joint-interest; but when they are to discharge themselves, it is otherwise, *Coke* 6. *part* 25. *Ruddocks* case. As where an Action is brought against two jointly to one thing, it seems if one confesses the Action, this shall not bind the other.

If an Action be brought against two jointly, and a judgment is thereupon had against them, and one of them releaseth errors, this shall not hinder the other to bring a Writ of Error, because he is to be charged by the judgment.

Seifune.

The King brought Error, it is no plea, that his Ministers have seized the Land, unless the King agree to it, 39 *Affize* *pl.* 18. For the King shall not

not be bound by the Act of his Officers without his consent. Yet 2. if it be done by an Officer of Record.

The Judgment in Error. 1. For the Plaintiff.
2. For the Defendant. 3. For both.

In Error two things are to be done. 1. To reverse the judgment. 2. That the party be restored to all that he lost by reason of the judgment, 9 Hen. 6. 47. B. Martin. Coke 5. part 39. B. Teyes case. 2. Whether he shall be satisfied for all his dammages? It seems he shall.

The judgment was that the Plaintiff should not be restored to the Land, with the mean profits, 11 Hen. 4: 93. pl. 49. 2. For a several Action lies for the mean profits. Affise.

And 8 Hen. 6. 2. A. Rolfe, that he shall recover the Land and the Issues of the Land, that is, the profits.

The judgment was, *Quod judicium reverteretur & aduulletur, & quod Defendens de intrusione, intrusione, transgressione & contemptu, convincatur, & à possessione amoveatur & capiatur, &c. quodque recordum mittatur in Scaccarium pro executione habenda, &c.* Coke 1. part 40. A. Altonwoods case. Information upon Intrusion.
The Action and judgment were in the Exchequer.

In a *Quare Impedit*, that the former judgment should be void, and the Plaintiff restored to all that he lost, 18 & 19 Eliz. Dyer 353. pl. 30. Quare impedit.

Gardein recovers in a *Quare Impedit* in right of the Ward, the Defendant at full age of the Ward brought error, and a *Scire facias* against the
the

the Ward, the Ward entitles himself by his ancient right, and found for him. 1. The judgment shall be reversed against the Gardein, and yet the Defendant shall not be restored, because he is barred by the plea of the Ward, 9 Hen. 6. 47. B. Newton.

Redisseisin

The judgment was, that the judgment shall be reversed, and that the Plaintiff be restored to the Land, and to the issues taken in the mean time, 9 Hen. 4. 6. pl. 19: that is, to the mean profits of the Land taken *pendente lite*.

Utlawry.

The judgment was upon an Utlawry in felony, that the Utlawry should be reversed, and he restored at the common Law to all that he had lost by this cause, 11 Hen. 4. 53. pl. 32. 7 Hen. 4. 40. B.

And that he should be restored at the Common Law to that he had lost, 3 Eliz. Dyer 196. pl. 39. viz. by reason of the Owlawry.

Error by Executors of the Testators being utlawed was, that the Utlawry be reversed, and that they shall be restored to the goods of their Testator, seized by reason of it, 11 Hen. 4. 65. pl. 22.

It shall be *Quod judicium redditum staret in omni robore per Coke Chief Justice, Pasc. 12. Jac. Ban. Regis, Sir John Heydons case*; and yet 21 Edw. 4. 44. A. was *quod judicium redditum remanebit stabile in perpetuum*, nor the form is let judgment be affirmed.

This is the
Judgment
for dam-
ages.

Et ulterius concessum est, quod prædictus A. recuperet versus præfat. B. 10. l. eidem A. per Curiam Domini Regis hic adjudicat. juxta formam Statuti inde nuper edit. &c. promissis & costagiis & dampnis suis

fuis que sustinuit occasione dilatationis executionis prædicti. prætextu prosecutionis dicti brevis Domini Regis de errore, &c. Lib. intra. 244. B. sect. 8. & 292. B.

By the Statute of 3 Hen 7. cap. 10. if error be sued before execution, and afterwards be discontinued by default of the party that brings it, or he be nonsuited, or judgment affirmed, the other shall recover his costs and damages by the discretion of the Judges.

An Infant and another levie a Fine, this may be reversed to the Infant by a Writ of Error, but it shall be good against the other, *Coke 1. part 76. B. Bredons case. No. Lib. intra. 255. C. sect. 11.* For the Fine shall stand good as far as by Law it may.

But if the Husband and Wife levy a Fine of the Land of the Wife, and they reverse it for Error, they shall be restored forthwith, because the Husband is joyned with his Wife but for conformity, *Coke 2. part 77. B. Cromwells case.* For the Estate passeth only from the Wife.

Though Execution be reversed, the judgment is yet good, *Coke 5. part 32. Pettifers case*; and a new Execution may be taken out.

A Fine reversed for fault in the Proclamations only, remains a good Fine at the common Law; for the other is but a Discontinuance, *4 Eliz. Dyer, pl. 54.* and is nothing to vitiate the Fine.

Execution in Error.

Lib. intra. 307. C. sect. 1.

F I N I S.